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No. 160A] NEW DELHI, THURSDAY, JUNE 18, 1953

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 4th June 1953

S.R.O. 1136.—WHEREAS the election of Shri Ram Chander Chowdhary, as a member of the Legislative Assembly of the State of Rajasthan from the Sadulgarh Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Motiram, son of L. Santokha Ram Sangaria, Tehsil Hanumangarh, District Ganganagar;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAJASTHAN, BIKANER

ELECTION PETITION No. 245 of 1952

Shri Motiram son of L. Santokha Ram, resident of Sangaria, Tehsil Hanumangarh, District Ganganagar (Rajasthan)—*Petitioner.*

Versus

1. Shri Ramchandrar Chowdhary son of Pema Ram, resident of Ganganagar Purani Abadi.
2. Shri Chanan Singh, Jat Sikh of Chak Partapnagar, Tehsil Hanumangarh, District Ganganagar.
3. Shri Hari Ram son of Hukma Ram, resident of Makasar, Tehsil Hanumangarh.
4. Shri Dewan Singh, sikh of Manaksar, Tehsil Hanumangarh.
5. Shri Naraina Ram son of Gopal Ram, resident of Tulwara Jhil, Tehsil Hanumangarh.
6. Shri Harish Chander, Vakil, resident of Ganganagar.
7. Shri Manohar Lal son of Parmanand Brahman, resident of Hanumangarh.
8. Shri Chand Singh Jat Sikh, resident of village Mohanpura Tehsil Ganganagar.

9. Shri Bahrumal Sindhi, resident of Karanpur, District Ganganagar—*Respondents*.

Election Petition under Section 81 of the Representation of the People Act, 1951, challenging the election of the respondent No. 1 to the Rajasthan Legislative Assembly from Sadulgarh Constituency.

CORAM:

1. Shri M. P. Asthana—*Chairman*.
2. Shri M. C. Bhandari—*Member*.
3. Shri Goverdhandas T. Gajria—*Member*.

Petitioner through Shri Nanakchand Pandit, Advocate, Supreme Court, and Shri Raghubar Dayal Goel, Advocate, Respondent No. 1 through Shri Mukat Beharilal Bhargava, Advocate, Supreme Court assisted by Shri Bisheswar Nath, Pleader, and Shri Suraj Karan Acharya, Shri Laxmi Narayan Purohit and Shri Sri Gopal Acharya, Advocate for respondent No. 1 and Shri Birbaladas Advocates for respondent No. 3.

JUDGMENT

The petitioner has filed this petition under section 81 of the Representation of the People Act, 1951 for a declaration that the election of the Respondent No. 1 Shri Ram Chandra Chowdhary, to the Rajasthan Legislative Assembly from the Sadulgarh constituency in the Ganganagar district, is void. For one seat in this constituency as many as ten candidates filed their nomination papers, out of whom petitioner is one and the remaining nine are the respondents. The petitioner filed in all six nomination papers, four on 24th November, 1951 as an independent candidate bearing serial numbers 4, 5, 6 and 7 respectively, and two on 26th November, bearing serial Nos. 49 and 141 respectively, as a party candidate of the "Kisan Janta Sanyukta Party Rajasthan". These nomination papers came up for scrutiny by the Returning Officer on 29th November, 1951 when certain objections were raised against them which were accepted by the Returning Officer who rejected them all.

The grounds for setting aside the election in question, as set out in the petition are (1) that the respondent No. 1 is a Government Pensioner and as such holding an "office of profit" under the State of Rajasthan, (2) that he was and is a President of a Government aided school which is also an "Office of profit" under the State Government, (3) that he was a share-holder with his uncle Chowdhry Jiwan Ram who is an approved Government contractor, (4) that the nomination paper of Manoharlal respondent No. 7 has been improperly rejected (5) that the petitioner's nomination paper has also been improperly rejected by the Returning Officer, (6) that the respondent No. 1 has been guilty of corrupt practices inasmuch (a) he sought the assistance of one Shri Amarsingh, Excise sub-Inspector who was at that time posted there, in order to further the prospects of his election, by making him canvass for him and to exercise his official influence in order to secure votes for him (b) he held out promises and offers of allotment of land and other acts of favouritism to persons in order to secure their votes. The petitioner has not mentioned in his petition as to why and how the nomination paper of Shri Manoharlal respondent No. 7 has been improperly rejected by the Returning Officer, and so far as his own nomination papers are concerned, he has mentioned in paras b and c of ground I of his grounds mentioned in the petition, which in our opinion are not clear so as to give us an idea as to the case of the petition regarding the order of rejection passed by the Returning Officer. However, with some effort we have been able to find out from these paras that the grievance of the petitioner is that he had made an application to the Returning Officer of his constituency that he should be allotted the symbol of the party viz. Kisan Janta Sanyukt Party, as no other candidate was standing as a candidate on this party ticket, but the Returning Officer did not accede to this request and rejected his first set of nomination papers. So far as the second set of nomination papers of the petitioner bearing serial Nos. 49 and 141, is concerned, which he filed as a candidate of the Kisan Janta Sanyukt Party, he filed a declaration that he was standing as a candidate of this party. While selecting the symbols as a Kisan Janta Sanyukt Party candidate, the petitioner had to select the symbol of "Cart" as his first preference amongst the three symbols, which he did not do, but instead put in "Camel" and on an objection being raised, against this the Returning Officer rejected both the sets of nomination papers, the first on the ground that the petitioner had chosen the symbol of "Cart" as his second preference as an independent candidate, a symbol which was admittedly reserved for a political party viz. Kisan Janta Sanyukt Party, though the petitioner told the Returning Officer that since this party was no

more in existence, this symbol may be allotted to him, but the Returning Officer did not accede to his request; the Returning Officer rejected the second set of nomination papers on the ground that the petitioner had not selected the symbol of "cart" as first preference, as a party candidate of the "Kisan Janta Sanyukt party", which had been allotted this symbol as its first preference, by the Chief Electoral Officer, Rajasthan.

In reply to the above allegations, the respondent No. 1 has stated that the petitioner was neither an official candidate of the Kisan Janta Sanyukt Party, nor did he file his nomination papers as such, that the nomination paper of the respondent No. 1 was rightly accepted, that no corrupt or illegal practices were adopted by him, that the nomination papers of Manoharlal respondent No. 3 had been properly rejected, that though the respondent No. 1 is drawing pension from the Government of Rajasthan, he is not holding any office of profit under the Government of Rajasthan, that as a President of the Gramonthan Vidya Pith a Government aided school, he is not holding any office of profit inasmuch as he does not get any remuneration but on the contrary has to spend something from his pocket, that he has never been a share-holder with his uncle Chowdhry Jiwan Ram, that he never sought the assistance of Amarsingh, Excise Sub-Inspector as alleged, and has further said that the petitioner since the very beginning has been a puppet in the hands of the respondent No. 3 Hariram, that he worked as the latter's polling agent at no less than ten polling stations, and very vigorously canvassed for him and the result of the poll was that the respondent No. 1 secured 16,446 votes, the respondent No. 3 Hariram got about 11,000 and odd and the respondent No. 2 about one thousand only. And lastly that the result of election has not been materially affected even if it be held that the nomination papers of the petitioner and the respondent No. 7 were improperly rejected, inasmuch as, they were very unpopular in this constituency, and had not the least chance of success.

The respondents Nos. 3 and 7 who have filed their written statements, have admitted the contents of the petition, and the respondent No. 7 has further alleged that he, at the time of the scrutiny of his nomination paper filed applications to the Returning Officer praying that the name of the proposer of the respondent was available in the electoral rolls, which were returned by the Returning Officer without passing any order and that the result of the election on account of such improper rejection of his nomination paper, has been materially affected. On these pleadings the Tribunal framed the following issues:—

Issue No. 1.—Have the nomination papers of the petitioner and respondent No. 7 Shri Manohar Lal been wrongly rejected? If so, has it materially affected the result of election?

Issue No. 2.—Were the nomination papers of respondent No. 1 improperly accepted, as alleged? If so, has it affected the result of the election materially?

Issue No. 3.—Is respondent No. 1 guilty of adopting any corrupt illegal practices as alleged. If so, what is its result?

Issue No. 4.—Was the petition not properly presented and is liable to be rejected?

Issue No. 5.—To what relief, if any, is the petitioner entitled?

REASONS

Issue No. 1.—This issue relates to the rejection of the nomination papers of the petitioner and the respondent No. 7. As the points involved in the rejection of these two sets of nomination papers are distinct from each other, we will deal with each set separately.

(a) *Nomination papers of the petitioner.*—The petitioner had filed two sets of nomination papers, one consisting of four on 24th November, 1951, bearing serial numbers 4, 5, 6 and 7 as an independent candidate and the other consisting of two on 26th November, 1951, as a party candidate of the "Kisan Janta Sanyukt Party Rajasthan". So far as the first set of nomination papers which he filed as an independent candidate, is concerned, the petitioner mentioned "camel, cart and pitcher", as first, second and third symbols respectively, and so far as the second set is concerned, he put in the same symbols and in the order of same preference. The petitioner, in his statement recorded before us on 11th December, 1952 before the issues were framed, has deposed as under:—

"When I filed my second set of nomination papers on 26th November, 1951, I gave up my position as an independent candidate."

So when the nomination papers came up for scrutiny on 29th November, 1951 before the Returning Officer, the position of the petitioner, as admitted by him, was that he had given up the idea to contest as an independent candidate, as he had taken up the position as a party candidate of the "Kisan Janta Sanyukt Party, Rajasthan". We feel that in view of the change of position effected by the petitioner after he had filed the first set of nomination papers on 24th November, 1951 inasmuch as he adopted the roll of a party candidate, the Returning Officer should not have considered the first set of nomination papers filed by the petitioner as an independent candidate, as no candidate, in our opinion, can maintain two rolls, as by doing so he will be creating many complications. Besides this, a candidate by adhering to the nomination papers filed by him as an independent candidate and also as an official candidate of a political party, puts the Returning Officer in a very difficult position so far as the allotment of symbols is concerned. So, if the Returning Officer considered the petitioner's first set of nomination papers and rejected them on the ground that as an independent candidate, he could not put the symbol of "Cart" as a second preference, he has only committed an irregularity in rejecting them, as in our opinion he should have rejected them straight away without any scrutiny, as the second set of nomination papers filed by the petitioner as an official candidate of the Kisan Janta Sanyukt Party, completely superseded the first one. This is the position admitted by the petitioner himself and is the consequence of filing the second set of nomination papers by him. So we have held that the rejection of the petitioner's first set of nomination papers bearing serial numbers 4, 5, 6 and 7, was not improper though our reasons are different from those given by the Returning Officer.

Now coming to the 2nd set of nomination papers bearing serial numbers 49 and 141 filed by the petitioner on 26th November, 1951, we find that that the Returning Officer was of the opinion that since the petitioner who admittedly was an official candidate of the Kisan Janta Sanyukt Party, which had been recognised as a political party for the purpose of elections and was allotted the symbol of "Cart", did not select this party symbol as his first preference, his nomination papers were not properly filed as required by sub-rule 2 of rule 5 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951, and thus rejected them. Sub-Rule (2) of Rule 5 of the Rules runs as under:—

"In constituencies other than Council constituencies, every nomination paper delivered under sub-section (1) of section 33 shall be also accompanied by a declaration in writing specifying the particular symbol which the candidate has chosen for his first preference out of the list of symbols for the time being in force under sub-rule (1) and also specifying two other symbols out of that list which he has chosen for his second and third preferences respectively; Provided that the choice to be made by a candidate under this sub-rule shall be subject to such restrictions as the Election Commission may think fit to impose in that behalf."

Now in pursuance of sub-rule (1) to rule 5 of the above Rules, the Election Commission has published in its notification No. 32/1/51-Elec.II(2), dated the 8th September, 1951, Gazette of India, Extraordinary 1951 Part I Section 1, page 256, a list containing 25 symbols which include the three symbols of camel, cart and pitcher at numbers 25, 18, and 21 respectively. Again in pursuance of powers conferred by proviso to sub-rule (2) of Rule 5, the Election Commission in the same notification has directed that no candidate shall choose except with the permission of the Returning Officer (1) any of the symbols specified in items 1 to 14, of the said list, or (2) any other symbol included in a further list or lists which may be notified hereafter. The symbols selected by the petitioner in his nomination papers, are outside the first 14 symbols, which obviously had been reserved by the Election Commission, for allotment to some political parties recognised as such. The Election Commission, it is admitted, had given powers to the Chief Electoral Officers of the various states to allot separate symbols out of the remaining symbols to certain political parties which were active in those states only and which were not operating as All India parties and in pursuance of the delegation of those powers, the Chief Electoral Officer had allotted the symbol of "Cart" to the Kisan Janata Sanyukt Party in Rajasthan vide Press Note Ex A-9 issued by him. It has been argued on behalf of the petitioner that the Election Commission had no power to delegate these powers of allotting any symbols to any political party, to the Chief Electoral Officers, as under the proviso to sub-rule (2) of Rule 5 of the Rules, it is the Election Commission which can put restrictions on the choice of symbols and not any other person, and as such the reservation of the symbol of "Cart" for the Kisan Janta Sanyukt Party

of Rajasthan by the Chief Electoral Officer is illegal and beyond his powers and consequently the rejection of the petitioner's nomination papers, which is based on the allotment of this symbol of "Cart" to the above mentioned political party, is also illegal. We are afraid we do not agree with this contention. As a matter of fact, there is no prohibition in the Rules against the delegation of the powers of imposing restrictions regarding the allotment of symbols, by the Election Commission to any other authority, with a view to operate these provisions in places where the Election Commission itself cannot do. Law does not lay down any restrictions against delegation of powers which are either executive or ministerial and unless special prohibition is laid down in the statute itself against such delegation, such powers can be delegated. Therefore, we feel that the Election Commission was well within its powers in delegating these powers of allotting symbols to any political parties operating in any particular state to the Chief Electoral Officer of the States. The learned counsel for the petitioner has next contended that the restrictions imposed on the choice of symbols were required to be published in the official gazette, without which they should have no binding effect. Although sub-rule (1) of Rule 5 enjoins the publication of the list of symbols by notification in the official Gazette, the proviso to the sub-rule (2) does not say that the imposition of restrictions on the choice of symbols shall be likewise published and no particular mode is prescribed for publication of such restrictions. We are, therefore, definitely of the opinion that the law did not enjoin such publication in the official Gazette and their non-publication does not render them invalid. That being the position on the date of the scrutiny of the nomination papers filed by the petitioner viz. that after giving up the position as an independent candidate and becoming an official candidate of the Kisan Janata Sanyukt Party, the question for consideration is whether the choice of symbols mentioned by him in the second set of nomination papers; viz. "camel", "cart" and "pitcher", was a valid choice in accordance with the provisions of sub-rule 2 read along with its proviso, of rule 5 of the Rules. It is also very interesting to refer here to one application ex. P-6, made by the petitioner to the Returning Officer asking the latter that since the Kisan Janata Sanyukt Part had been dissolved, the symbol of "Cart" reserved for it, should be allowed to him as a second preference as an independent candidate. In the absence of any official information, the Returning Officer could not scrape out this political party which was recognised as such. All these facts very clearly show that the petitioner, had not taken up one position from the time he filed his nomination papers till their scrutiny. On 24th November, 1951, he was a candidate on an independent ticket which on 26th by filing fresh nominations, was changed by him, according to his own admission to that of an official candidate of the Kisan Janta Sanyukt Party and again after having changed his first position, he wanted to revert to the original position as an independent candidate when he by his application ex. P-6, sought for the permission of the Returning Officer, to choose the symbol of "cart" as his second preference, on the ground that this party was no more in existence and therefore this symbol could be awarded to the petitioner.

It has been contended by the learned counsel for the petitioner that the provisions regarding the preference of symbols, are not mandatory but they are only directory and no nomination papers should be rejected on the ground of this non-compliance and has in this connection referred us to Rule 10 of the Rules in which he has drawn our special attention to the words "Returning Officer shall before preparing a list of valid nominations under section 38, consider the choice as respects symbols expressed by the candidates in the declarations referred to in sub-rule (2) of Rule 5 delivered by them along with their nomination papers, and shall, subject to any general or special directions issued in this behalf, by the Election Commission, assign a different symbol to each candidate in conformity as far as practicable with his choice", and this urges that it is clear from the words "as far as practicable with his choice" that the Legislature intended that the provisions contained, either in section 33 of the Representation of the People Act, 1951 and rule 5 of the Rules, regarding the declaration of symbols, are only directory and not mandatory, but what is mandatory is that the candidate must give his choice of symbols whether it conforms with the rules or not. As against this contention, the learned counsel for the respondent No. 1 has urged that the provisions regarding giving a declaration as to symbols in the nomination papers by a candidate, in accordance with rule 5 of the Rules, subject to the restrictions imposed by the Election Commission and the Chief Electoral Officer, are mandatory and the declaration being an invalid one, the nomination paper is not filled in accordance with law, which leaves no option to the Returning Officer but to reject it. In this connection he has referred to the provisions of section 33 sub-section (3) of the Representation of the People Act, 1951, according to which "every nomination paper delivered under sub-section (1) shall be accompanied by a declaration

in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another who is not disqualified under this Act for the appointment and who shall be named in the declaration, and by such other declarations, if any, as may be prescribed, and no candidate shall be deemed to be duly nominated unless such declaration or all such declarations are, delivered along with the nomination paper," and also he has drawn our attention to the provisions of sub-rule (2) of Rule 5 of the Rules, which go to show that these provisions regarding the declaration of symbols in a nomination papers, are mandatory and not directory. In sub-section (3) of section 33 of the Representation of the People Act, 1951, there is an similar provision regarding the appointment of an election agent by the candidate which is also mandatory. If these provisions were directory, as is being contended on behalf of the petitioner, then in our opinion their non-compliance will cause considerable amount of confusion and make the task of the scrutiny by the Returning Officer more difficult and embarrassing. The learned counsel for the respondent No. 1 has in this connection referred us to the Tangail South Mohammadan Rural constituency case of Amir Ali Khan *Versus* Mohamad Shamussal Haque and others reported in the Indian Election cases by Sen and Poddar, page 1042 in which in a majority judgment, it has been observed that the selection by a candidate of a symbol which is not in the list of symbols is no selection; it is a failure to complete the nomination paper in the form specified and to comply with the provisions of law, entailing the rejection of the nomination paper. Acceptance of such nomination paper is improper." The provisions contained in sub-section (3) of section 33 of the Representation of the People Act, 1951 relating to the declaration of appointment of an election agent by the candidate in the prescribed form, and also such other declarations, if any, as may be prescribed and sub-rule 2 of Rule 5 of the Rules, which prescribes that "every nomination paper delivered under sub-section (1) of section 33 shall be also accompanied by a declaration in writing specifying the particular symbol which the candidate has chosen for his first preference out of the list of symbols for the time being in force, under sub-rule (1) and also specifying two other symbols out of that list which he has chosen for his second and third preferences respectively", we are of a mandatory nature and their non-compliance invalidates the nomination paper as it cannot be deemed to have been filled in the manner prescribed by law and the candidate shall not be deemed to have been duly nominated if he does not file with his nomination paper the necessary declarations. The Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, have been framed by the Central Government, under the powers given to it by section 169 of the Representation of the People Act, 1951 and have got the same force as the provisions of the Act with the result that violation of their provisions which are mandatory will entail a penalty upon the person concerned. In this connection the learned counsel for the respondent No. 1 has referred us to the judgment of the Patna Election Tribunal reported at page 105 of the Government of India Gazette, Extraordinary dated 14th January, 1953, had given the following three symbols in the order of preference:—(1) "Weighing scale"; (2) "Bicycle"; (3) "Elephant". As there were no such symbols by the denomination of "Bicycle" and "Weighing scale", the Returning Officer rejected the petitioner's nomination paper. It has been contended on behalf of the petitioner that the assignment of symbols was a matter within the discretion of the Returning Officer who was competent to assign any symbol outside those chosen by the candidates. But this does not necessarily mean that he has not to take into consideration the choice made by the candidate in his nomination paper and conform to it as far as possible. In our opinion the choice of symbols by a candidate is very important and significant. The present case of the petitioner is very peculiar in as much as the petitioner all the time insisted that the Returning Officer should allot him "cart" as his first preference which he never put in, in any of his nomination papers and his insistence for "cart" clearly showed that the declaration filed by him along with his nomination papers which was in contravention of the mandatory provisions of sub-section (3) of section 33 of the Representation of the People Act, 1951 and sub-rule (2) of Rule 5 of the Rules, is not a technical defect, but is a material irregularity invalidating the nomination, as without the first choice being there, which should have been of the symbol "cart" the candidate's choice remained a truncated or an incomplete one which vitiated his nomination. This case has one other unique aspect which is that the petitioner's insistence on the allotment of the symbol "cart" did not leave any scope for the Returning Officer to exercise his discretion to allot the petitioner any other symbol outside his choice. It is not the case of the petitioner that he left it entirely to the discretion of the Returning Officer to allot him any symbols he liked. In view of these facts, the question of the exercise of discretion by the Returning Officer, in this case, does not arise. So we hold that the rejection of the petitioner's second set of nomination papers bearing serial numbers 49 and

141, by the Returning Officer, under the circumstances, was not improper as we feel that it is the petitioner himself who is responsible for such a state of affairs in as much as he did not fill in the nomination papers as required by the provisions of section 33 of the Act and Rule 5 of the Rules which are mandatory and took different and inconsistent positions at different times before the Returning Officer.

(b) *Nomination paper of Manohar Lal, Respondent No. 7.*—In connection with the rejection of the nomination paper of Manoharlal the respondent No. 7, marked as serial number 153, the petitioner in ground II in para. 8 of his petition has alleged that the result of election of the respondent No. 1 has been materially affected by the improper rejection of the nomination paper of this respondent but no grounds have been mentioned as to why the order of rejection of this nomination paper passed by the Returning Officer, is wrong. In our opinion the petitioner should have specifically mentioned the grounds on account of which the order of rejection of the nomination paper of this respondent is improper. No doubt he has filed a certified copy of the order of rejection marked as Ex. P-7, from which it has been possible to make out that the Returning Officer rejected the nomination paper of the respondent No. 7 on the ground that the name of the proposer could not be found in the electoral roll at serial No. 94 of ward No. 1 of Sadulgarh Town, as mentioned by the candidate in his nomination form.

Now the nomination paper of the respondent No. 7, in column 10 against "the serial number of the proposer in the electoral roll of the constituency", mentions "94 ward No. 1 Sadulgarh". What happened when the Returning Officer took up this nomination paper for scrutiny on 29th November, 1951, is very much in controversy, as much depends upon that. Now it is an admitted position that the electoral roll of the constituency in question, is divided into wards, and in case of many wards consists of two parts viz; one the main electoral roll and the other supplementary in which the serial numbers given to the electors were not continuous, but were given to each part separately with the result that some serial numbers in the two parts of the same ward were common. We have had a look at a copy of the Electoral roll in question which was summoned from the Collector, Ganganagar and we did not find anything thereon to suggest that any particular ward had a supplementary list also unless one's attention was drawn to it specifically. Now the petitioner's contention is that when the nomination paper of the respondent No. 7 was taken up by the Returning Officer for scrutiny, the respondent No. 7 showed the supplementary roll to the Returning Officer and the serial number 94 against which the proposer's name appeared, in spite of which the Returning Officer, it is alleged rejected the nomination paper. In support of this the petitioner has examined Shri Manoharlal, respondent No. 7, as P. W. 5 who says that his nomination paper had been filled in by Shri Jhamanlal, an Advocate, who was not shown the supplementary list. The petitioner who has examined himself as P. W. 6 has first stated in his evidence that he is not definite whether Shri Manoharlal had produced the list before or after the rejection of the nomination paper in question, but has subsequently changed and said that he did show it before the rejection. The next witness on this point is the proposer Harditsingh P. W. 7 who first stated that he had seconded the nomination paper and then corrected and said that he had proposed. He has stated that at the time of the scrutiny of the nomination paper of the respondent No. 7, who was first absent, told the Returning Officer that his name appeared against serial number 94 in the supplementary list which was lying on his table and actually showed the entry to him, but as he did not listen, the witness went to call Shri Manoharlal and on his return he found Manoharlal coming out of the Returning Officer's room who told him that the Returning Officer had rejected the nomination paper. It is further alleged that the respondent No. 7 after his nomination paper was rejected presented an application to the Returning Officer, which is Ex. 11 to the effect that his name appears at serial number 94 and that he should not have rejected his nomination paper, and another application ex. 12, dated 30th November, 1951 for reconsideration of the order of rejection, which it is alleged, the Returning Officer threw away. Even these applications do not make a mention of any supplementary roll having been shown by the respondent No. 7 to the Returning Officer before or after the scrutiny which has a very devastating effect upon the petitioner's case. In this connection, the respondent No. 1 has examined the Returning Officer Shri Niranjan Singh, R. W. 1 who has stated before us that at the time of scrutiny of the nomination paper of the respondent No. 7, neither the respondent nor any other person on his behalf appeared at the call, much less did any person including the proposer Harditsingh point out the entry against serial number 94 in the supplementary roll to him, he therefore looked at the entry in column No. 10 of the nomination paper and verified the same with the

electoral roll and when he did not find the proposer's name against serial No. 94 of the main roll, he rejected the nomination paper. We have carefully considered the evidence of the petitioner and also his witnesses to the effect that they were present at the time of the scrutiny of this nomination paper, and actually showed the entry against serial number in question in the supplementary roll and that the respondent No. 7 presented two applications exhs. 11 and 12 which were thrown away, and we are of the opinion that the same is not trustworthy and cannot be relied upon; We are not prepared to believe that the respondent No. 7 and his proposer Harditsingh P. W. 7 showed the entry against serial number 94 to the Returning Officer. We are sure and are actually convinced from the evidence of the Returning Officer that if any such entry had been shown to him, he would surely have considered it. We are also not prepared to accept the petitioner's contention that the respondent No. 7 presented two applications exhs. 11 and 12 to the Returning Officer who threw them away. In our opinion these two applications are an after thought to strengthen this false story. The evidence of the Returning Officer is supported by the evidence of the respondent No. 1 who also has stated that at the time of scrutiny of the nomination paper in question no one was present. Even the order rejecting the nomination paper shows that no one was present on behalf of the respondent No. 7.

Now that being the position viz; that no one was present at the time of the scrutiny of the nomination paper of the respondent No. 7, the question for our consideration is whether the Returning Officer was justified in rejecting the nomination paper in question as per the entries made therein. As we have seen the copy of the electoral roll of the constituency in question, which is a fairly bulky volume we find that no one will be able to know that there are any supplementary lists attached to some wards unless he is told so or unless he goes through it carefully. If a person is not told about these supplementary lists, his attention will not be drawn in this direction, as every ward in the electoral roll does not contain a supplementary list. We have, therefore to see whether the Returning Officer could by any means, have the knowledge that the proposer Harditsingh's name and serial number mentioned against column 10 in the nomination paper, would be found not against serial No. 94 of ward No. 1 of the Sadulgarh Town in the main roll but against the same serial number in the supplementary roll when no mention has been made about the supplementary roll in the nomination paper. The only means for the Returning Officer to know would be a specific mention of "supplementary roll" in the nomination paper, without which no knowledge about the existence of any such entry could be imposed to him. There is one very important fact which is that in column No. 8 of the nomination paper, the serial number of the candidate in the electoral roll, has been shown as "2351" ward No. 1, 2 Sadulgarh Town" which in fact refers to the main roll and not to the supplementary roll though the latter is there. Similarly the serial number of the seconder in column No. 14 in the nomination paper is shown as "59-village Naraingarh" which also refers to the main electoral roll. With this background of the facts, we are of the opinion that it was absolutely necessary for the respondent No. 7 to have mentioned in his nomination paper that the serial number 94 of the proposer was of the supplementary roll in order to enable the Returning Officer to find it out and compare it with the entries in the nomination paper and such an omission, in our opinion is of a very substantial nature and the rejection of the nomination paper due to this omission cannot be considered as improper. It is on account of this that the Chief Electoral Officer issued a press note, dated 20th November, 1951 Ex. A-8 in which the following observations are very important and relevant:—

"The electoral areas with reference to which rolls have been prepared in Rajasthan are the villages in respect of rural areas, and the wards in respect of municipal areas. In respect of names of electors added to the electoral rolls, by means of supplementary rolls, or lists of addenda would be the serial number of the elector and he should specify the part of the roll in which his name appears. Thus, if the name of an elector is entered at a particular number in the supplementary roll of a village, he would mention that his name appears in the supplementary roll of that particular village at the particular serial number."

Besides this the instructions contained in note 6 in the nomination paper, require the candidate to give all the details of his electoral roll numbers and also those of his proposer and the seconder to enable the Returning Officer to verify the particulars. No doubt these instructions do not form a part of the provisions of the Act, but they give us some kind of indication as to the intention of the Legislature specially when the form of nomination has been prescribed in the schedule

of forms annexed to the Representation of the People Act. In view of what we have stated, we are also of the opinion that if the name of either the candidate or proposer or seconder, appears in the supplementary roll, this fact should be mentioned in the nomination paper without which the nomination is incomplete and is liable to be rejected.

In this connection it has been argued on behalf of the petitioner that law contemplates only one roll and supplementary roll being a part of one and the same roll, it is not mandatory to mention the word "supplementary" in the nomination paper. No doubt, there is only one electoral roll, but when the serial numbers in both are not in seriatum, but each has got separate serial numbers amongst which some are in common, it becomes necessary to distinguish the supplementary roll from the main roll though it is not necessary to mention the main roll as it will be presumed to be the main roll unless it is mentioned as supplementary in the nomination paper. In this case the main roll is styled as "Nirvachan Soochi" whereas the supplementary is shown as "Poorak Soochi". This view that we have taken finds support in the case of "Narhar Rao *versus* Vishnu Pant" reported at page 206 of Doabia's Indian Election cases, in which the sub-division of the electoral roll was omitted in the nomination paper and it was held that the nomination was properly rejected. This case has been followed by the Election Tribunal Hazari Bagh, in the case of "Rameshwar Prasad Singh *Versus* Krishina Gopal Das and others" reported at page 630 of the Government of India Gazette Extraordinary, dated 4th March, 1953 in which the name of the village to which the candidate belonged was not mentioned and it was held that the nomination paper was rightly rejected as the omission was of a substantial character. In this case we are of the opinion that the omission to mention the supplementary roll in the nomination paper made the entries in column No. 10 of the nomination as it would not be possible either for the Returning Officer or the rival candidates to locate the name of the proposer at serial No. 94 which without the mention of the "supplementary roll" will be presumed to be of the main roll.

The learned counsel for the respondent No. 1 has further contended that since the respondent No. 7 has not filed a separate petition challenging the validity of the election of the respondent No. 1 on the ground of improper rejection of his nomination paper, this Tribunal should not go into the question in the petition filed by the petitioner. Since we have dealt with this question on merits, on useful purpose will be served in dealing with this objection.

An argument was advanced by the learned counsel for the petitioner that since the petitioner possessed all the requisite qualifications to stand as a candidate, the rejection of his nomination paper by the Returning Officer has violated his fundamental rights and as such the election of the respondent No. 1 should be declared as void. We are afraid we are not able to accept his argument as no violation of any of the fundamental rights of the petitioner is involved in this case in which the only question for our consideration has been whether the petitioner and the respondent No. 7 have complied with the provisions of the Representation of the People Act, 1951, and whether their nomination papers were properly rejected or not which has nothing to do with the fundamental rights.

As a result of the above decision, we come to the conclusion that the nomination papers of both the petitioner and the respondent No. 7 were not improperly rejected by the Returning Officer and answer this issue accordingly. In view of our finding on this part of the issue against the petitioner, we do not think it necessary to deal with the second part viz; whether the result of the election of the respondent No. 1 has been materially affected by the improper rejection of the nomination papers of the petitioner and the respondent No. 1.

Issue No. 2.—This issue has not been seriously pressed before us nor do we find that there is any evidence to prove that the nomination paper of the respondent No. 1 was improperly accepted.

Issue No. 3.—This issue which relates to the corrupt and illegal practices alleged to have been practised by the respondent No. 1 has not been pressed before us by the learned counsel for the petitioner.

Issue No. 4.—This issue also has not been pressed by the learned counsel for the respondent No. 1.

Issue No. 5.—In the result, we hold that the petitioner is not entitled to any relief and his petition stands dismissed. So far as costs are concerned, we order that the petitioner should bear his costs and also those of the respondent No. 1 and we assess the counsel's fee at Rs. 250. The other respondents to bear their own costs.

FINDINGS

Issue No. 1, 1st Part	.	.	.	.	.	In the negative.
Issue No. 1, 2nd Part	.	.	.	.	.	Does not arise.
Issue No. 2	.	.	.	.	.	In the negative.
Issue No. 3	.	.	.	.	.	In the negative.
Issue No. 4	.	.	.	.	.	Not pressed.
Issue No. 5	.	.	.	.	.	Petition dismissed with costs.

ORDER

The petition is dismissed. The petitioner should bear his costs and also those of the respondent No. 1 and we fix Rs. 250 as counsel's fees. Other respondents should bear their own costs.

(Sd.) M. P. ASTHANA, *Chairman.*

(Sd.) GOVERDHANDAS T. GAJRIA, *Member.*

(Sd.) M. C. BHANDARI, *Member.*

The 31st May, 1953.

Judgment pronounced in the open Court, signed, sealed and dated the 31st of May, 1953

(Sd.) M. P. ASTHANA, *Chairman.*

(Sd.) GOVERDHANDAS T. GAJRIA, *Member*

(Sd.) M. C. BHANDARI, *Member.*

The 31st May, 1953.

IN THE ELECTION TRIBUNAL RAJASTHAN BIKANER AT BIKANER

MEMO OF COSTS

IN ELECTION PETITION No. 245 OF 1952

Decided on 31st of May, 1953

1. Shri Moti Ram s/o L. Santoka Ram of Sangarla—*Petitioner.*

Versus

1. Shri Ram Chander Chowdhery s/o Pemaram resident of Ganganagar,

2. Shri Chanan Singh Jat Sikh of Chak Partapnagar, T. Hanumanpuri and seven others.

Election Petition u/s 81 of R.P. Act calling in question election of Respondent No. 1 to R.L.A. from Sadulgarh Constituency.

*Petitioner's expenses**Respondent No. 1's expenses*

	Rs.	A.	P.		Rs.	A.	P.
1. Stamp Petition	.	.	—	1. Stamp Vakalat	.	.	1 0 0
2. Stamp Vakalat	.	.	1 8 0	2. Vakil's fee	.	.	250 0 0
3. Vakil's fee	.	.	1,000 0 0	3. Process fee	.	.	11 8 0
4. Process fee	.	.	2 8 0	4. Miscellaneous	.	.	139 1 0
5. Miscellaneous	.	.	195 1 0				
TOTAL	.	.	1,200 0 0	TOTAL	.	.	401 9 0

Rupees twelve hundred only.

Rupees four hundred and one and annas nine only.

(Sd.) M. P. ASTHANA, *Chairman.*

[No. 19/245/52-Elec.III/8474]

The 31st May, 1953.

S.R.O. 1137.—WHEREAS the election of Shri Kalyan Singh, as a member of the Legislative Assembly of the State of Ajmer, from the Bhinai Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Madan Singh, S/o Shri Har Lal, Advocate, Station Road, Ajmer,

And Whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, STATE OF AJMER, AJMER

PRESENT:

Shri J. D. Sharma, *Chairman.*

Shri C. Jacob and Shri S. N. Agarwala—*Members.*

ELECTION PETITION No. 233 OF 1952

Shri Madan Singh s/o Har Lal, Advocate, Station Road, Ajmer—*Petitioner.*

Vs.

1. Shri Kalyan Singh s/o Jagmal Singh, Istimrardar of Bhinai.

2. Shri Lal Chand s/o Sua Lal, Mahajan of Bhinai.

3. Shri Munshi Ram s/o Sheetal Prasad, Brahman of Bhinai—*Respondents.*

JUDGMENT

This is a petition for declaring void the election of Shri Kalyan Singh respondent No. 1 and further for declaring the petitioner to have been duly elected to the Assembly of the Ajmer State from Bhinai Constituency.

The petitioner was a candidate for election to the Ajmer State Legislative Assembly from the Bhinai Constituency and secured 2970 votes. The respondent No. 1 Tazini Istimrardar of Bhinai was also a candidate and secured 3164 votes. The respondent No. 2 Shri Lal Chand withdrew his candidature within the prescribed time. The nomination papers of Shri Munshi Ram respondent No. 3 were rejected on the ground that the thumb marks of the proposer and seconder Rugha and Hazari were not made in the presence of and were not attested by the Returning Officer.

The election of the respondent No. 1 is challenged on the grounds that as an Istimrardar, he is the holder of an office of profit and therefore disqualified for the membership of the legislature and that he has been guilty of the corrupt practices mentioned in the appendices A, B and C vitiating the election.

The respondent No. 1 contests the petition on the grounds that the petitioner is not the person 'Madan Singh s/o Har Lal' appearing at serial No. 527 in the electoral roll and the respondent No. 1, as an Istimrardar, is not a holder of an office of profit. It is further pleaded that the respondent No. 1 was not guilty of the corrupt practices alleged in the petition which has not been properly presented and is not within limitation.

The respondent No. 3 has raised the plea that his nomination papers were wrongly rejected and the rejection has materially affected the result of the election.

On the pleadings, the following issues were framed:—

1. Is the petitioner not the person 'Madan Singh son of Har Lal' appearing at serial No. 527 in the Electoral Roll? Is this plea open to respondent?
2. Does the respondent No. 1 as Istimrardar of Bhinai hold an office of profit within the meaning of section 102 of the Constitution of India? Was his nomination wrongly accepted?
3. Was the respondent No. 1 guilty of corrupt practices mentioned in para 8 (2, 3, 4 and 5) of the petition and appendices A and B?
4. Has the petition been properly presented and is within limitation?
5. Was the nomination of respondent No. 3 wrongly rejected? Has the rejection materially affected the result of the election?
6. Is the petitioner entitled to be declared elected?

FINDINGS

Issue No. 1.—The plea that the petitioner is not the person 'Madan Singh son of Har Lal' appearing at serial No. 527 in the electoral roll has not been seriously pressed in arguments. The petitioner Shri Madan Singh has stated that he is the son of Har Lal who was also called Hari Singh. Nemi Chand R.W. 10 stated that the name of Shri Madan Singh's father as mentioned in the scholar's register of the Government College is Hari Singh and that Madan Singh mentioned in the

register is the same as Shri Madan Singh petitioner whom he knows personally. He has further stated that his residence as given in the register is Bijainagar and his caste is Rajput. Ram Jas R.W. 22 has also stated that Shri Madan Singh is the son of Har Lal also called Hari Singh. It is further in his evidence that Shri Madan Singh lived with Har Lal and is in possession of a house and well in Bijainagar.

There is no evidence on the record to prove that Shri Madan Singh is the son of Shiv Dan. Reliance has been placed upon a sale-deed of which a certified copy has been produced by respondent No. 1. The sale-deed purports to have been executed by Madan Singh son of Shiv Dan in favour of Nathu Lal and Ram Jas of Bijainagar. But the execution of the sale-deed by the petitioner Shri Madan Singh has not been satisfactorily proved. Further reliance has been placed upon certain applications purporting to have been made by Madan Singh son of Shiv Dan, Masuda Raj. Shri Madan Singh denied having written the applications and there is no satisfactory evidence to prove that the applications are in his hand-writing or bear his signatures. Shri A. N. Alexander R.W. 16 stated that Ex. A-3 appeared to be in the hand-writing of Shri Madan Singh. But, as is clear from his evidence, he could have no occasion to be familiar with his hand-writing or signatures of Shri Madan Singh.

On the evidence, it must be held that the petitioner Shri Madan Singh is the same as Madan Singh son of Har Lal appearing at serial No. 527 in the electoral roll.

Issue No. 2.—The expression 'Office of profit' is not defined in the Constitution or the Representation of People Act, but it is not a term of art and its meaning and import are well understood. The essential characteristics of an 'Office of profit' are:—

- (1) It involves an appointment by the State in one form or the other
- (2) It carries emoluments payable mostly periodically.
- (3) Is for a limited period
- (4) Is terminable.
- (5) Is not assignable.
- (6) Is not heritable.
- (7) The holder of the office must be *sui juris*.

It has to be judged in the light of the above characteristics whether an Istimrardar is the holder of an office of profit. According to Wilson's Glossary page 345, an Istimrar is a farm or lease granted in perpetuity by the Government or Zamindar at a stipulated rate. An Istimrardar is the holder of a perpetual farm or lease. Under section 20 Regulation II of 1877, an Istimrari Estate means an Estate in respect of which an Istimrari Sanad has been granted before the passing of the Regulation by the Chief Commissioner with the previous sanction of the Governor General in Council and Istimrardar means the person to whom such a Sanad has been granted or any other person who becomes entitled to the Istimrari Estates in succession to him. The status of an Istimrardar has, therefore, to be determined on the basis of the Sanad in his favour. The main terms and conditions of the Sanad are:—

"I The Istimrardar shall at all times remain faithful in his allegiance to Her Majesty Queen Victoria, Her Heirs and Successors, and perform all the duties which, in virtue of such allegiance, may be demanded from him. If any question arises as to whether this condition has been faithfully observed, the decision thereon of the Governor-General in Council shall be final.

IV. He shall, in accordance with custom, make reasonable provision for the support of such surviving relatives of his immediate predecessor as are hereinafter mentioned, and, in the event of any dispute arising as to such provision, shall conform without objection to the orders he may receive from the Chief Commissioner or other principal Officer charged with the administration of Ajmer. The relatives above referred to are the following: Grand parents, parents, widows, brothers, sisters, sons, whether natural born or adopted, daughters, nephews, nieces and grand-children.

X. He shall furnish to the Deputy Commissioner all statistics and information for which he, under the orders of Government, may call, and shall keep up such establishments as may be declared necessary for the preparation of such statistics, or for the supply of such information.

- XI. He shall report all crime occurring on his Estates, and assist in its detection, or repression, in such a way as he may be directed, he shall not harbour offenders within his Estates, and he shall use his best endeavours to preserve order and prevent crime, and whenever called on by the Officers of Government for assistance he shall render every aid and assistance in his power."

Particular stress is laid on the condition that an Istimrardar will owe allegiance to Queen Victoria and her successors and the Governor General will be the final judge of whether an Istimrardar has been true to his allegiance. The mere fact that an Istimrardar under the Sanad owes allegiance to the Crown cannot, by itself, lead to the conclusion that he is a holder of an office of profit. Every citizen, in a way, owes allegiance to the Crown who is now replaced by the Constitution of India. It is open to question if in view of the fundamental rights mentioned in the Constitution of India, allegiance can be demanded of an Istimrardar which cannot be demanded of any other citizen of the State.

Also the provision in the Sanad for providing maintenance to a certain class of relations does not make an Istimrardar a holder of an office of profit or detract, in any manner, from his status as an ordinary citizen. The provision is a necessary corollary to the mode of succession which is by rule of primogeniture. At the same time, it creates an obligation and does not confer a right on the Istimrardar. It is most significant that in the Sanad there is no condition for resuming the Estate and there has been no instance in which an Estate has been resumed. Thakur Gopal Singh, the old Istimrardar of Kharwa was detained under Regulation III of 1818 for his activities considered disloyal at that time but the Estate was not resumed and it was at his own instance that Thakur Gopal Singh abdicated the Estate in favour of his son. It clearly means that the Estate of an Istimrardar is not terminable as an office of profit is at the option of the state and also of its holder.

An 'Istimrari Estate' does not carry any emoluments as an office of profit does. The contention of the petitioner is that an office of profit may have perquisites not essentially in the nature of salary and an Istimrardar has the largest perquisite in the shape of a fixed charge. The term 'Istimrar' itself connotes a farm or lease in perpetuity at a fixed charge. That is no doubt a valuable perquisite inasmuch as the Estate is not liable to enhancement of charge but an Istimrari Estate is not an exception in this respect. There is permanent settlement in the whole of Bengal and in the eastern Districts of the U.P. Hence the mere fact that the Estate is held in perpetuity at a fixed charge does not make it an office of profit. Further reliance is placed on the provisions of Regulation II of 1877 relating to Istimrari Estates. Section 21 provides that all tenants in an Istimrari Estate shall be presumed to be tenants-at-will. Under section 22, an Istimrardar cannot alienate his Estate except for life. Section 23 lays down the rule of succession and provides that no adoption made by a widow shall be deemed valid until confirmed by the Governor General in Council. Under section 24, any question as to the right to succeed to the Istimrari Estate arising in a case not provided for by section 23 shall be decided by the Governor General in Council or by such officer as he may appoint in this behalf subject to the proviso that the Governor General Council may grant a certificate declaring that the matter is one proper to be determined by a civil Court. Section 25 says that all claims for maintenance against an Istimrardar by any member of his family shall be preferred to the Chief Commissioner whose decision thereon shall be final. Section 27 confers on an Istimrardar the privilege of being tried for a criminal offence by the District Magistrate or Sessions Judge with the previous sanction of the Chief Commissioner. Under section 28, no Istimrardar can be arrested in execution of any process of any civil or revenue Court except with the previous sanction of the Chief Commissioner. And under section 29, no decree for money against an Istimrardar can be executed after his death and no decree for money can be passed against any person as the representative of a deceased Istimrardar.

Certain privileges are no doubt attached to an Istimrari Estate, but neither singly nor collectively are they such as to make an Istimrari Estate an office of profit. It is not uncommon to find provisions in the old enactments lying down that the tenants of a particular Estate shall be tenants-at-will. Under section 21, there is only a presumption that the tenants are at-will. It does not mean that there cannot be tenants other than tenants-at-will. The provision relating to an adoption by a widow only places a disability on her and is by no means a characteristic of an office of profit. Similarly, the provisions relating to succession and maintenance do not confer on an Istimrardar the status of a holder of

an office of profit. The privilege conferred by section 27 is inconsistent with the provisions of the Constitution of India and their validity is open to question. It is also doubtful if the provision really confers a privilege.

Section 28 does confer a privilege on an Istimrardar but the women are entitled even to a greater privilege as they cannot be arrested at all in a decree for money. We are, therefore, of the opinion that none of the provisions in Regulation II of 1877 confers on an Istimrardar the status of the holder of an office of profit.

It is further pointed out that an Istimrardar has the privilege of distilling liquor without a license. Under section 67 of Regulation I of 1915, the State Government is empowered to confer this privilege on any person. It is not one of the privileges mentioned in the Sanad. It is further pointed out that an Istimrardar can keep arms without having to pay license fee. Under section 27 Arms Act, the State Government can exempt any person from the license fee. It is also urged that an Istimrardar is under an obligation to provide force for the maintenance of law and order. Reliance in this connection is placed upon a circular dated 22nd November, 1951. Under section 17 Police Act, the services of any person can be requisitioned to help in the maintenance of law and order. Similar duties are prescribed by sections 42, 43, and 44 Cr.P.C. It is noteworthy that under the Scheduled Districts Act 1871, the Criminal Procedure Codes of 1861 and 1871 did not apply to the province of Ajmer. Some provisions peculiar to the province had, therefore, to be made for the maintenance of law and order and it was why a duty was cast on an Istimrardar to provide necessary force when so required. It will, thus appear, that an Istimrardar lacks almost all the essential elements of a holder of an office of profit:

- (1) He is not an appointee of the State. All the present Istimrardars are by virtue of succession.
- (2) He does not have the emoluments which the holder of an office of profit has. Indeed he gets no remuneration from the State revenues.
- (3) He holds the estate in perpetuity and not for a limited period.
- (4) The Estate is not terminable.
- (5) The Estate is assignable at least for life. An office is never assignable.
- (6) The Estate is heritable. An office is seldom heritable.
- (7) The holder of an Istimrari Estate may not be sui-juris.

All these characteristics materially distinguish an Istimrari Estate from an office of profit and it is impossible to hold that an Istimrardar is the holder of an office of profit.

It has been pointed out that an Istimrardar is absolutely subservient to the Government and the policy underlying Art. 102 of the Constitution is that all persons who are under subservience or tutelage to the Government should be disqualified for the membership of a legislature. Subserviency or the so-called tutelage to the Government is not a test of judging whether a particular person holds an office of profit as it is not possible to lay down any standard for judging the degree of subservience. Art. 102 places a restriction on eligibility for election and must, therefore, be strictly interpreted and no office which does not satisfy the essential elements of an office of profit as commonly understood can fall under the scope of Art. 102.

Reliance has been placed upon the decision reported in the Gazette Extraordinary dated 23rd August, 1952, in which Shrimati Hensa Mehta was held to be disqualified for election on the ground that as Vice-chancellor of the University of Baroda, she held an office of profit under Art. 102 of the Constitution. She was appointed Vice-chancellor by the State Government and held the office for a limited period. She was also removable by the State under certain circumstances. The decision has, therefore, no bearing on this case. Further reliance has been placed upon the decision of the Election Commission reported in the Gazette of India Extraordinary dated 2nd April, 1953. That case also has no bearing as the members of the Legislative Assembly were the appointees of the State Government and as members of the District Advisory Council drew certain emoluments. On behalf of the respondent No. 1, reliance is placed upon the decision of the Cuttak Tribunal reported in the Gazette Extraordinary dated 24th February, 1953, in which it was held that a Sarbarekar was not a holder of an office of profit although many of the incidents consistent with the position of an office holder are common to the Sarbarekar.

We are, therefore, of the opinion that the respondent No. 1, as an Istimrardar, did not hold an office of profit and was not disqualified for the membership of the legislature and his nomination papers were not improperly accepted.

Issue No. 3.—The corrupt practices alleged in the petition fall under the following heads:—

- (1) the offer of Rs. 2,000/- by respondent No. 1 as an inducement to the petitioner to withdraw his candidature.
- (2) the use of motor vehicles to convey the voters of Bandanwara to the polling station.
- (3) offer of money to the voters of Arjunpura.
- (4) offer of money to the voters of Paranga.
- (5) offer of money to the voters of Kalyanpura.
- (6) giving of grass to Thakur Samrath Singh of Kanai Kalan for securing votes.
- (7) remitting the Hasil of Shri Deep Chand Chatar and giving permission for the construction of a Verandha in the Bazar for securing votes.

The petitioner was also a candidate from Masuda and Deolia Constituencies. There were also congress candidates from those Constituencies. The respondent No. 3 was a congress candidate from the Bhinal Constituency but his nomination papers were rejected. The petitioner was approached on behalf of the Congress to accept the candidature on their behalf. The case of the petitioner is that the respondent No. 1 having persuaded the respondent No. 2 to withdraw his candidature wanted the petitioner also to withdraw from the contest and with that end in view, he along with Thakur Onkar Singh, Istimrardar of Padla came to his office on 10th December, 1951, and offered to pay Rs. 2,000/- which he placed on the table if he (petitioner) withdrew his candidature. But, he took one day for consideration. The respondent No. 1 accompanied by Thakur Onkar Singh came again on 11th December, 1951, and produced Rs. 2,000/- which were placed on the table but the petitioner refused to withdraw his candidature and accept the money. Shri Brij Lal P.W. 24 deposes to have gone to the office of Shri Madan Singh on 10th December, 1951, to consult him about a house in which his relation was a tenant. He is a chance witness and there was no particular occasion for him to go to the office of Shri Madan Singh. It is significant that he has never seen Shri Madan Singh after that date. It is highly improbable that the respondent No. 1 would have placed Rs. 2,000/- worth of currency notes on the table in the presence of a stranger or even without knowing the views of the petitioner in the matter. For the same reason, it is difficult to believe that he would have repeated the process on the 11th December, 1951. Reliance on behalf of the petitioner has been placed on the evidence of Ch. Shivrarnain Singh, Advocate and M.L.A. who deposes to have gone to persuade the petitioner to accept the candidature on behalf of the congress. His evidence has been criticized on the ground that he being a congressman and a friend of the petitioner has interest in him and that he has also filed his power as an Advocate on behalf of the petitioner. In appraising the evidence of Ch. Shivrarnain Singh, his high position and respectability cannot be altogether ignored. But, considering all the circumstances, it appears rather improbable that the respondent No. 1 would have made a parade of the money in the manner stated on behalf of the petitioner. Chand Singh P.W. 23 is a mere chance witness and has not satisfactorily accounted for his presence in the office of the petitioner when the offer for the money is said to have been made. We, therefore, hold that the offer of Rs. 2,000/- for the withdrawal of the petitioner's candidature has not been proved.

(2) The allegation in the petition is that the car No. 2760 and pick-up No. 3572 belonging to Thakur Chander Singh, Istimrardar of Bandanwara, were used for conveying the voters of Bandanwara to the polling station Bandanwara. It is not denied that the two vehicles belonged to the Thakur of Bandanwara. It is also admitted that the car No. 2760 made two trips to the polling station—once for conveying the wives of the Thakur and his son and once for conveying the Thakur himself. It is denied that the pick-up No. 3572 was on the day of polling, namely, 12th January, 1952, in Bandanwara. It is said to have been taken some days before to Diggi and left there as its axle had broken. Shri Madan Singh has stated that he saw the pick-up and car standing near the camp of the respondent No. 1 and the women voters getting down from them and entering the polling station. He has been supported by Yagya Datta P.W. 3, Wilson Watson P.W. 4, Ratan Lal P.W. 5, Manak Chand P.W. 6 and Anandi Lal P.W. 12. Shri Madan Singh gave to the Presiding Officer Shri Raghubar Dayal Misra Ex. 1 alleging that the

pick-up and car were conveying the voters and asking him to verify the above fact. Shri Raghubar Dayal Misra has stated that on the complaint being brought to his notice, he went for verification and saw a motor car standing about a furlong from the polling station. Curiously enough, Shri Raghubar Dayal Misra made the endorsement Ex. 1/A on 13th January, 1952. His evidence has been criticized on the ground that in his note Ex. 1/A, he did not make any mention of the car. Shri Raghubar Dayal Misra was not asked why he did not make a mention of the car in the note and the reason for his not doing so can only be surmised. As Shri Raghubar Dayal Misra did not see any lady voters getting down from the car which, according to him, was standing about a furlong from the polling station, it seems he did not think it necessary to make a mention of it in his endorsement. On behalf of the petitioner, the photos Exs. 2 and 3 were taken of the car and their enlargements Exs. 7, 8 and 9 leave no doubt that they relate to the car No. 2750. It is also admitted by Kr. Raghbir Singh R.W. 5 that the photo is of the car. It is not without significance that no photo of the pick-up has been produced and this fact alone goes to show that there was no pick-up for conveying the voters to the polling station otherwise there could be no reason why its photo should not have been taken. Reliance on behalf of the petitioner has been placed upon the evidence of Fateh Singh R. W. 7 who stated that the pick-up and the car of the Thakur of Bandanwara were also running and bringing the women-folk of the Thakur and of the Kamdars and made three or four trips. He has further stated that in one or two trips, women voters were brought and in the remaining two, the Thakur and some other men came. According to the petitioner's evidence, the pick-up was seen coming from the side of Amargarh. There is not the least suggestion that the pick-up brought any voters of Bandanwara. In this respect Fateh Singh R. W. 7 materially contradicts the petitioner's evidence and although he has been examined on behalf of the respondent No. 1, his evidence relating to the pick-up is not entitled to any weight. On behalf of the respondent No. 1, Thakur Chander Singh R.W. 26, Ladu Ram R.W. 12 and Gordhan R.W. 6 have stated that the pick-up was taken to and left at Diggi some days before the polling day.

On a consideration of the evidence and circumstances we are of the opinion that the pick-up of the Thakur of Bandanwara was not used for carrying any voters to the polling station.

There is practically no dispute about the number of trips made by the car. Shri Wilson Watson P.W. 4 stated that he saw the car bringing the lady voters two or three times. But, Shri Ratan Lal P.W. 5 has definitely stated that the car came to the polling station twice. To the same effect is the evidence of Thakur Chander Singh who has stated that the car made two trips. It is also tolerably clear from the evidence that in one trip, the car conveyed the wives of Thakur Chander Singh and his son Kr. Raghbir Singh. Shri Ratan Lal has stated that the wife of Har Nath Bari, Tula Bari, Laxmi Narain, Nand Lal, Bhura Daroga, Mohan Lal Pipara and Mohan Lal Pokharna also came in the car with the wives of the Thakur and his son. Considering the accommodation in the car, it is rather improbable that as many as 9 lady voters including the wives of the Thakur and his son would have come in one trip. Shri Ratan Lal himself modified his statement in the cross-examination as he stated that the five women whose husbands are named by him in the examination-in-chief are the maid-servants in the Garh. It will not, therefore, be unreasonable to infer from his statement that only five maid-servants came in the car with the wives of the Thakur and his son. Shri Ratan Lal has admitted that the maid-servants generally accompany the Thakurani and Kuwrani. Hence, there could be no corrupt practice in conveying the maid-servants in the car with the wives of the Thakur and his son.

There is a serious controversy regarding the second trip of the car. Thakur Chander Singh has stated that he went to cast his vote in his car driven by his younger son. The petitioner's evidence, on the other hand, is that the lady voters of Madan Singh, Fateh Singh and Mohan Singh Mahajans of Bandanwara were conveyed in the car. Fateh Singh R.W. 7 to whose evidence reference has been already made above stated that Mohan Singh and Madan Singh were his collaterals and his womenfolk went in a bullock cart to cast their votes at the polling station. He has given his evidence in a candid manner and there is no adequate ground to disbelieve his evidence. It cannot, therefore, be held that the ladies of the Mahajans named above were conveyed in the car to the polling station.

In view of the above finding, it is unnecessary to go into the question whether Kr. Raghbir Singh was an agent of the respondent No. 1 and was present at the polling station or not on the 12th January, 1952. Our conclusion is that the corrupt practice under head (2) has not been proved.

(3) Chhoga P.W. 7 has stated that Kr. Raghubir Singh accompanied by respondent No. 1, Ram Nath, Dalia, Suja and Ladu Sunar came five or seven times to his village and asked the voters to cast their votes for the Raja Sahib otherwise the Banta would be increased and they would not be allowed to graze their cattle in the Bir of Ratakot. It is further in his evidence that Kr. Raghubir Singh and his party came to the village two days before the polling and made an offer of money for securing votes. Chhoga says that the Raja of Bhinai gave two currency notes of Rs. 10 each which he offered to him and the same offer was made to Suja. Kr. Raghubir Singh is also said to have made an offer of Rs. 2 to each voter to give his vote for the Raja Sahib. Chhoga has been corroborated by Hukma P.W. 8 and Sheoji P.W. 9. According to Sheoji, the Raja Sahib took out from his pocket currency notes worth Rs. 70 which he gave to Kr. Raghubir Singh for payment to the voters. Apart from the material discrepancy in the evidence, it is highly improbable that the respondent No. 1 and Kr. Raghubir Singh would have made the offer of money in the manner suggested by the witnesses. It may be noted that Sheoji swore an affidavit denying the allegations of the offer of money to him. Dalia, Ram Nath and Suja have denied that they accompanied Kr. Raghubir Singh to Arjunpura two days before the polling. We, therefore, hold that the allegation of the offer of money to the voters of Arjunpura has not been made out.

(4) Bhanwar Lal P.W. 16 has stated that Kr. Raghubir Singh came to his village Garanga two days before the polling and in the course of lecture, he asked the voters to cast their votes for the Raja Sahib otherwise their cattle would be stopped from grazing in the fields. It is further in his evidence that Fateh Lal Sharma was accompanied by Sheoji and asked him and Gheesa to secure votes for the Raja Sahib in consideration of the Muafi and also made an offer of the payment of Rs. 40. Bhanwar Lal has been corroborated by Gheesa P.W. 17. Gheesa has also stated that he had no influence in the village and told the workers of the Raja about it. It is impossible to believe that an offer of money could have been made to a person who had no influence in his village. Otherwise also, it is improbable that the offer of money would have been made in the manner suggested by the witnesses. Nathu Lal P.W. 18 contradicts Bhanwar Lal and Gheesa, as according to him, the Raja of Bhinai and Kr. Raghubir Singh in the course of the lecture simply said that the votes should be cast for the Raja and not for the congress as it was the matter of the village and they would be with the village people in distress and happiness. He denies that any other talk took place. In the face of the statement of Nathu Lal, no reliance can possibly be placed on the testimony of Bhanwar Lal and Gheesa. It may be noted that Bhanwar Lal verified the affidavit Ex. A/1 denying that an offer of money was made to him.

(5) Baldeo P.W. 19 has stated that Hathi Singh and Kanak Mal of Kitap went to his village Kalyanpura for canvassing votes for the Raja Sahib and one day before the polling, they collected the village people and asked them to secure the votes for the Raja and take Rs 500. He has been corroborated by Partab P.W. 20. But, he has no personal knowledge and deposes to have heard from his brother about the money offer. Hathi Singh and Kanak Mal examined on behalf of the respondent No. 1 have denied that they made any offer of money to the voters of Kalyanpura. We are not at all impressed by the evidence of Baldeo and Partab and do not place any reliance upon it. Reference has been already made to the petitioner's evidence that Kr. Raghubir Singh held out the threat of increasing the rate of Banta and stopping the cattle from grazing in the Ratakot Bir if the voters did not give their votes to the Raja of Bhinal. Under the existing law, it is not open to an Istimrardar to increase the 'Banta' at his will. The threat to increase the 'Banta' was, therefore, meaningless. Kr. Raghubir Singh has stated that from 1st April, 1950, Ratakot Bir has been taken over by the State Government and is in their possession. It would have, therefore, been simply futile on the part of Kr. Raghubir Singh to hold out the threat of stopping the cattle from grazing in the Bir.

(6) Thakur Samrath Singh of Kanai Kalan R.W. 21 admits that he had taken 12 cart-loads of grass in Kartik 1951 from the Raja of Bhinal as a loan which he repaid in January, 1953. Ex. A/4 purports to be the receipt of repayment. Shri Madan Singh has stated that within his hearing, Thakur Samrath Singh, his son and ~~and~~ told the voters on 8th January, 1952, that he had been given 15 cart-loads of grass by the Raja of Bhinai in order that he would secure votes for him and they (voters) should not act in a manner making it necessary for him to pay the price of the grass. Why Thakur Samrath Singh would have made the above statement in the presence and within the hearing of the petitioner is difficult to understand. Suraj Karan P.W. 26 has stated that Thakur Samrath Singh told him that he had received 15 cart-loads of grass from the Raja of

Bhinal in connection with the canvassing of votes and that the grass could be given to those who canvassed or cast the votes. He further says that the Thakur gave the grass to Sheo Chand, Sukha and Chhitar. There is no evidence in corroboration and it will not be safe to rely upon the sole testimony of Suraj Karan. The respondent No. 1 has stated that due to scarcity, the grass was given as a loan which has been repaid. It is further in evidence that the respondent No. 1 is the head of the clan to which Thakur Samrath Singh belongs. Considering the relationship, it is rather improbable that Samrath Singh would have taken 12 or 15 cart-loads of grass as a consideration for securing the votes from his own kinsman.

(7) It is common ground that Shri Deep Chand Chatar has built a Verandah in front of his shop. He has stated that he took permission in November, 1951, to build the Verandah on his Chabutri and the Verandah is not on the Bazar land. Similar permission is said to have been granted to others but they have not raised the constructions. Shri Deep Chand Chatar denies that the Hasil has been remitted. It is pointed out on behalf of the petitioner that there were strained relations between the Raja Sahib and Shri Deep Chand Chatar and the latter could not have worked for the former in the Election unless there was some consideration particularly as he was a congressman. Shri Deep Chand Chatar denies that he was ever in the congress. The petitioner's evidence goes to show that he had left the congress four or five months before the day of Election. The suit for Hasil is still pending in the Court of the S.D.O., Kekri, and apart from the admission attributed to Shri Deep Chand Chatar there is no evidence on the record to prove that the Hasil was remitted. The mere fact that Shri Deep Chand Chatar in spite of his strained relations in the past worked in the Election for the Raja Sahib cannot, by itself, lead to the conclusion that it was in consideration of the permission to build the Verandah.

On a consideration of the evidence, we are of the opinion that the corrupt practices alleged in the petition have not been proved.

Issue No. 4.—The issue has not been pressed and there can be no doubt that the petition has been properly presented and is within limitation.

Issue No. 5.—Reference has been already made to the circumstances in which the nomination papers of the respondent No. 3 were rejected by the Returning Officer. It is urged on behalf of the petitioner and respondent No. 3 that the nomination papers were duly subscribed under section 33(1) of the Representation of People Act. Reliance on behalf of the respondent No. 1 has been placed upon section 2(2) of the Rules, 1951 framed under the Representation of People Act which says that for the purpose of the Act or the Rules, a person who is unable to write his name shall unless otherwise expressly provided in these Rules be deemed to have signed an instrument or other paper if he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the Presiding Officer or such other officer as may be specified in this behalf by the Election Commission and such officer on being satisfied as to his identity has attested the mark as being the mark of such person. It is contended that as the thumb marks of Rugha and Hazari were not placed in the presence of the Returning Officer, they cannot be deemed to have signed or subscribed to the nomination papers under section 33(1). In our view, section 2(2) referred to above prescribes a mode of authenticating the thumb-marks and does not require an illiterate voter to subscribe to the nomination paper before a Returning Officer. If that were the intention of the legislature, a provision to that effect would have certainly found a place in section 33. The same conclusion is reinforced by the absence of the word 'only' after the word 'if' in section 2(2) of the Rules, 1951. The nomination papers of the respondent No. 3 were properly subscribed to by Rugha and Hazari. Even assuming that there was a defect as much as the thumb marks were not placed before the Returning Officer, it was not a defect of substantial character. It was not disputed that the thumb-marks on the nomination papers were of Rugha and Hazari. The respondent No. 3 has stated that Rugha and Hazari were present at the time of the scrutiny and his counsel Shri Mukat Behari Lal Bhargava asked the Returning Officer to verify the thumb-marks from Rugha and Hazari. The Returning Officer was empowered under section 36(2) of the Representation of the People Act to make a summary enquiry and we are clearly of the view that if he felt any doubt for which there was, perhaps, no room, about the genuineness of the thumb-marks of Rugha and Hazari, then he was under the statutory obligation to make the enquiry.

There can be no doubt that the nomination papers of the respondent No. 3 were in proper form and were wrongly rejected.

It has been argued on behalf of the respondent No. 1 that as the rejection of nomination papers of the respondent No. 3 is not a ground on which the Election is challenged in the petition, it is not open to the respondent No. 3 to challenge the election on that ground. Reliance has been placed upon Sen and Poddar, page 741. That was a decision under the old law which was materially different from the law as embodied in the Representation of the People Act and has, therefore, no bearing on the present case. The respondent No. 3, as a duly nominated candidate, is a necessary party to the petition under section 82. If a candidate is omitted from being made a party to the petition, he is entitled to be joined as a respondent under section 90 within 14 days of the publication of the petition in the official Gazette. If the withdrawal of petition is permitted under section 109, a respondent is entitled to get himself substituted for the petitioner. The policy of law is clearly to give a respondent all opportunity to have an effective say in the matter and if necessary to prosecute the petition in certain circumstances. The respondent No. 3 is, therefore, perfectly within his right to challenge the election of respondent No. 1 on any ground open to him. Also, in the petition, there is an allegation that the nomination papers of the respondent No. 3 were rejected. It is true that the election is not challenged in the petition on that ground but section 83(1) says that an election petition shall contain a concise statement of the material facts on which the petitioner relies. Above all, the issue No. 5 was framed as arising out of the pleadings of the parties. We are, therefore, of the opinion that it is open to the respondent No. 3, as also to the petitioner, to challenge the election on the ground that the nomination papers of the respondent No. 3 were improperly rejected.

The improper rejection of the nomination papers raises a strong presumption which has not been rebutted in any manner that the result of election has been materially affected thereby.

Issue No. 6.—In view of the above findings, the election of the respondent No. 1 is declared void. For the same reason, the petitioner is not entitled to be declared elected. In the circumstances, it appears just and proper that the parties should bear their own costs.

ORDER

The election of the respondent No. 1 is declared void. The parties will bear their own costs.

(Sd.) J. D. SHOLME, *Chairman.*

(Sd.) S. N. AGARWAL, *Member.*

(Sd.) C. JACOB, *Member*

The 22nd May, 1953

[No. 19/233/52-Elec.III/8486.]

S.R.O. 1138.—WHEREAS the elections of Shri Mam Raj and Shri Ram Kumar as members of the Legislative Assembly of the State of Punjab from the Bhiwani constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Chiranjit Singh, son of Shri Gahar Singh, Bhiwani, Tehsil Bhiwani, District Hissar;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, HISSAR

PRESENT:

Shri Maharaj Kishore, retired District and Sessions Judge—*Chairman.*

Shri Tek Chand Sethi, retired District and Sessions Judge—*Member,*

and

Shri Gurbakhsh Singh Gyani, Bar-at-Law—*Member.*

ELECTION PETITION NO. 288 OF 1952

Thakar Chiranjit Singh s/o Gahar Singh, Rajput, Advocate of Bhiwani,
Tehsil Bhiwani, District Hissar—*Petitioner*

Versus

1. Shri Mam Raj s/o Kishna Ram, Harijan, resident of Hanuman Gate, Bhiwani.
2. Shri Ram Kumar s/o Niranjan Dutt, Brahmin, resident of Halu Bazar, Bhiwani.
3. Shri Fakir Chand s/o Nanu Ram, Harijan, resident of village Sewani, Tehsil Bhiwani.
4. Shri Munshi Ram s/o Karam Chand, Harijan, resident of Dhandi Rai Singh, Bhiwani.
5. Shri Bishambar Dayal s/o Khaki Ram, Harijan, resident of Halu Bazar, Bhiwani.
6. Shri Hanwant Ram s/o Sheo Ram, Harijan, resident of Hissar.
7. Shri Surjan s/o Nathu, Harijan, resident of ward No. 9, Bhiwani.
8. Shri Dungan s/o Chhaju, Harijan, resident of Subzi Mandi, Bhiwani.
9. Shri Parbhu s/o Polu, Harijan, resident of village Tigrana, Tehsil Bhiwani.

Respondents Nos. 3 to 9, other candidates for the seat reserved for the members of the scheduled caste as well.

10. Badri Pershad s/o Pat Ram, Brahmin by caste, resident of Thandi Sarak, Hissar.
11. Shri Chander Bhan s/o Pokhar, Jat by caste, resident of village Obra, Post Office Keru, Tehsil Bhiwani.
12. Shri Benarsi Das s/o Ram Sarup, Mahajan by caste, Editor of 'Apna Desh', resident of Bhiwani.
13. Shri Hardawari Lal s/o Nathu Ram, Jat of Hansi Gate, Bhiwani.
14. Shri Parbhu Lal adopted s/o Pana Lal, Jat, Advocate, Bhiwani.
15. Shri Banwari Lal s/o Mai Dhan, Luhar, resident of Subhash Street, Lohar Bazar Bhiwani.
16. Shri Bishambar Das s/o Deokaran Das, Jain, Pleader, Loharu, Tehsil Bhiwani.
17. Shri Prag Lal s/o Badri Das, Mahajan, resident of Loharu, Tehsil Bhiwani.
18. Shri Bakhtawar Singh s/o Het Ram, Jat, resident of village Prem Nagar, Tigrana Zail, Tehsil Bhiwani.
19. Shri Ranjit Singh s/o Duli Chand, Jat by caste, resident of Halu Bazar, Bhiwani.
20. Shri Ram Sarup s/o Mam Raj, Jat, resident of village Beedwan, Post Office Jhunpa, Tehsil Bhiwani.
21. Shri Arjun Singh s/o Sher Singh, Jat, resident of village Kharkhri Makhwan, Tehsil Bhiwani.

Respondents Nos. 10 to 21, other candidates for the remaining seat of the Bhiwani constituency of the Punjab Legislative Assembly 1952 Elections—*Respondents*.

PRESENT:

- Shri Nunya Mal and Shri Tribhawan Krishan, Advocates for the petitioner.
- Shri Thakur Dass Bhargava and Bakshi Ram Kishen, Advocates for Mam Raj, respondent.
- Shri Mahabir Pershad and L. Daya Kishen, Advocates for Ram Kumar, respondent.
- Shri Bahadar Singh, Government Pleader for Advocate General.

JUDGMENT

From the Bhiwani double member constituency, during the last Punjab Assembly Elections, Ch. Mam Raj Dhanak (Harijan), respondent No 1 was declared elected to the reserved seat and Sh. Ram Kumar, respondent No 2 to the remaining seat.

Nomination papers were filed for the above two seats by twenty two candidates including the petitioner, on the 5th of November, 1951, being the last date fixed for this purpose; they were scrutinized on 9th November 1951 by the Returning Officer, Shri Sultan Singh, Revenue Assistant, Hissar, who accepted them all notwithstanding the objections raised against Shri Mam Raj before him. Polling was held in the month of January, 1952, and counting was completed on the 1st February, 1952, and the result was published in the Punjab Government Gazette dated the 8th February, 1952.

The petitioner, Shri Chiranjit Singh, Advocate, has by this petition challenged the election of Shri Mam Raj and Shri Ram Kumar, the two returned candidates, from the aforesaid Constituency. Against Shri Mam Raj his allegation, as detailed in para 11 of his petition, is that he was a depot-holder for the distribution of rationed articles in the Bhiwani Rationing Area both at the time of filing nomination papers and on the day of scrutiny and is still continuing as such; he had and has for his benefit and on his own account an interest in a contract for the performance of services of the supply of rationed articles in the Bhiwani Rationing Area undertaken by the Punjab Government and consequently he was disqualified for being chosen as a member of the Punjab Legislative Assembly under the provisions of clause (b) of Section 7 of the Representation of the People Act, 1951 (hereafter called the Act).

Against Shri Ram Kumar the objection, as detailed in para 12 of the Petition, is that he was holding an office of profit as Secretary in the Joint Stock Company known as Messrs. Bhopal Cardboard Mills at the relevant time and he is still holding that office and as such had an interest for the supply of goods to the appropriate Government, and was consequently debarred from standing as member of the Assembly.

The petitioner further contends that owing to the illegal and improper acceptance of the nomination papers of the above respondents the result of the election had been materially affected, and he, therefore, prays that the election be declared wholly void.

Of the respondents, Shri Mam Raj and Shri Ram Kumar contested the petition and denied the allegations made by the petitioner. Shri Mam Raj denied that he was a depot-holder for the distribution of rationed articles in the Bhiwani Rationing Area either at the time of filing nomination papers or on the day of scrutiny, and avowed that he had never entered into any contract with the Punjab Government for the performance of services for the supply of rationed articles in the above area, nor had he any share or interest or benefit in any such contract. Consequently he maintained that he was not disqualified for being chosen as a Member of the Assembly.

Shri Ram Kumar likewise contended that there never existed any Joint Stock Company as alleged by the petitioner nor was he at any time holding any office of profit as Secretary in the said Company at the relevant time. He therefore repelled the petitioner's contention and maintained that his nomination papers had been validly accepted by the Returning Officer and his election cannot be set aside.

On the pleadings of the parties the following issues were framed:—

1. Whether nomination papers of Mam Raj, respondent No. 1 were invalidly accepted by the Returning Officer *vide* ground alleged in para 11 of the petition, and if so, its effect?
- 1-A. Whether these grounds were raised at the time of scrutiny of nomination papers and if not, its effect?
2. Whether nomination papers of Shri Ram Kumar, respondent No. 2 were invalidly accepted by the Returning Officer *vide* grounds alleged in para 12 of the petition, if so, its effect?
- 2-B. What is the effect of non-describing of particulars of grounds alleged in para 12 of the petition?

Issue No. 2.—During the course of these proceedings the petitioner abandoned the allegations made by him in para 12 of his petition against Shri Ram Kumar but he maintained that his election should also be set aside as the nomination papers of Shri Mam Raj had been improperly accepted. In this view of the case this issue was not pressed before us by the petitioner and must, therefore be decided against him.

Issues No. 1-A, 2-A and 2-B.—These issues were not touched before us at all and have indeed no force. The only issue agitated before us is issue No. 1.

Issue No. 1.—Three points fall for determination under this issue namely, (i) whether Shri Mam Raj respondent was a depot-holder at the relevant time,

(ii) If so, whether by reason of this depot he had entered into contract for the performance of services undertaken by the appropriate Government and consequently he was ineligible to stand as a candidate; in other words, whether his nomination papers had been improperly accepted by the Returning Officer:

(iii) Whether by the improper acceptance of the aforesaid nomination papers the election of both the returned candidates or only one of them should be set aside.

I propose to discuss these points seriatim.

Issue No. 1(i).—In his written statement this respondent pleaded that he was not a depot-holder at the relevant time. When examined on 4th February 1953 after the evidence of seven witnesses of the petitioner had been recorded, the respondent deposed that he had had no connection whatsoever with the depot of Mam Raj Harijan, and in fact never had any connection with this depot since 1949. His plea, as divulged for the first time in the course of his own evidence, was that a partition had been effected between him and his three major sons five or six days after Diwali festival in 1950 and in that partition the ration depot had fallen to the share of his sons, and thus he had severed his connection with the depot and was no longer interested in it. I will discuss this plea of partition presently.

Shri Mam Raj has three sons, all major, from his second wife who has died i.e., Brahm Dev, Sat Parkash and Om Parkash, and two sons and one daughter, all minors, from his third wife who is living. His first wife had died issueless.

Under the Distribution Scheme, then in force in Bhiwani town a depot was allotted to Shri Mam Raj, as he was a Harijan, on or about the 28th of October, 1948, vide Ext. P.W. 8/1 and Ext. P.W. 8/2. When this scheme was converted into the statutory rationing scheme sometime in January 1949, Shri Mam Raj executed an agreement Ext. P.W. 18/3 in form R-XIV on 29th January 1949 and deposited Rs. 200 as security on 2nd February 1949, as laid down in the rules. This security was pledged to the Town Rationing Officer, vide Ext. P.W. 6/1. It is admitted before us that Shri Mam Raj remained the owner of this depot till November 1950 when he gave it over to his major sons on partition. He is illiterate and can only sign his name in Hindi and consequently his eldest son Brahm Dev used to do most of the work and keep accounts at the depot from the very start.

A depot-holder for the distribution of food grains, such as Shri Mam Raj, had to take a foodgrain licence under the law, and this licence was obtained for this depot (B.R. No. 4) on 6th July 1949, in the name of Mam Raj Sat Prakash, vide Ext. P.W. 7/3. This licence remained in force till 31st March 1950. The original application for obtaining this licence, as stated by the licence Clerk of the District Food Controller's Office, P.W. 7, was not traceable in his office and hence he could not produce it before us. It is, however, clear that this licence was obtained by or on behalf of Mam Raj.

The above licence was not renewed for the year 1951-52 in time. Brahm Dev submitted the application, Ext. P.W. 7/4, sometime in November, 1951, (though the application bears no date) for renewal and stated that he had deposited Rs. 10 as the licence fee as well as late fee. When asked to explain this abnormal delay, he submitted an explanation (Ext. P.W. 7/6) on 26th December 1951, pleading that his younger brother used to work at the ration-depot but had gone away and he himself did not know that he had to get the licence renewed every year, and praying that he should be excused. His case was referred to Simla and ultimately the licence was renewed on 11th February 1952. The fee of Rs. 10 appears to have been deposited by Mam Raj Saty Parkash through Brahm Dev on 8th February 1952.

The application Ext. P.W. 7/1, dated 21st April 1952, was made for renewal of the licence for 1952-53 in the name of Mam Raj and purports to bear his signatures in Urdu, but he denied these signatures and said that he did not know Urdu at all. According to the licence Clerk the licence was renewed on this very application and there was no other application for renewal on the file. It appears that Mam Raj's name in Urdu was written by one of his sons.

It will be seen that the depot in question was in the name of 'Mam Raj Harijan' while the food-grains licence in respect of this depot was obtained in the name of Mam Raj Saty Parkash. On 18th January 1951 the Town Rationing Officer Bhiwani, Sh. V. P. Kumar, sent a circular letter (Ext. P.W. 2/1) to some of the depot holders including M/s Mam Raj Harijan, B.R. 4, saying "while examining your food-grains licence it has been observed that you hold food-grains licence in names other than the one of your depot and this is against the Government instructions; you are, therefore, instructed to get the licence transferred in the name of your depot within a period of 2 months after the issue of this letter and report compliance after the said date".

No action appears to have been taken on the above letter by Mam Raj or his sons till 26th February 1952 when Brahm Dev submitted the application Ext. P.W. 8/5, praying that the name of the depot be changed from Mam Raj Harijan into Mam Raj Saty Parkash and thereafter the name of the depot was changed accordingly.

It will be recalled that it was Mam Raj who had deposited the requisite security of Rs. 200 for the depot early in February, 1949. He withdrew this security on 8th May 1952 under the release authority of the Town Rationing Officer and on 13th May 1952 Brahm Dev executed a fresh agreement in Form R-XIV for this depot. Obviously it then struck them to have the depot transferred to Brahm Dev i.e. long after the election had been fought and won.

A food grain dalr has also to take a licence under the Marketing Act. As explained by Shri Harnam Singh, Marketing Inspector P.W. 11, applications for obtaining licences are filed in the office of Marketing Committee, Bhiwani, and are then forwarded to the Deputy Commissioner's Office Hissar and the Deputy Commissioner Hissar then issues licences. The witness produced a register of licences thus issued for Bhiwani and this register shows that a licence was issued in the name of Mam Raj Harijan on 30th March 1951 valid upto 29th March 1952. The witness says that he has been inspecting the premises of this depot off and on and seeing Shri Mam Raj respondent, his son Brahm Dev and his servant working at the depot. On the expiry of the above licence a new licence was obtained in the name of Mam Raj Saty Parkash on 21st June 1952 valid on 20th June 1953. It is thus clear that till June, 1952, this licence remained in the name of "Mam Raj Harijan".

None of the above documents, be it noted, contains a word to justify the inference that there was a partition between Shri Mam Raj and his sons before May or June, 1952. In his application Brahm Dev no doubt stated that he was working alone at the depot and could not get the licence renewed in time, but there too he failed to mention that he was the owner of the depot or that the depot had fallen to his share on partition.

The respondent has examined a few witnesses to prove the factum of partition between him and his major sons sometime in the middle of November 1950. On this point he has examined Chuni Lal R.W. 2, Sheo Nath R.W. 3, Jia Lal R.W. 4, Phul Chand R.W. 5, Krishna Ram R.W. 6, Jhungal Ram R.W. 7, Banwari Dhanak R.W. 8 and Brahm Dev R.W. 22 while he himself appeared as R.W. 23. The sum and substance of their evidence is that there used to be quarrels amongst the women folk in the family and it was, therefore, decided to effect a partition between Mam Raj and his three major sons, five or six days after Dewali (which by the way fell that year on 11th November) they all collected in the house of Shri Mam Raj and effected a partition between him and his sons, allocating the upper two *Chaubaras* to Saty Parkash and Om Parkash, half portion of the lower storey to Brahm Dev and the remaining half to Shri Mam Raj and his minor children.

As regards family business, they state that Shri Mam Raj was running this depot and was also working as a contractor, the depot was allotted to Brahm Dev and his two real brothers while the contract business remained with Shri Mam Raj. This is the evidence to support the plea of partition.

Most of the above witnesses are closely related to Shri Mam Raj and it is said that only relatives are expected to attend family partitions but relatives can

also be expected to support a false plea. Chuni Lal and Sheo Nath depose that the depot was allotted only to Brahm Dev but according to the other witnesses it was allotted to him and his two brothers. None of the witnesses is able to disclose how much money had been invested in the depot or what contract business Shri Mam Raj had in hand at that time. If the witnesses are to be believed these vital points were not even talked of, much less discussed, at the time of partition at all. Again Shri Mam Raj also owns a vacant site, measuring about 1,000 sq. yds., on the back of his residential house, but oddly enough this plot was not included in the hotch-pot at all. This evidence is absolutely worthless and has evidently been manufactured to uphold the belated plea of partition.

Brahm Dev's plea is that in the middle of 1950 his father had started withdrawing his money from the depot and consequently he was driven to borrow a sum of Rs. 4,000 from Karam Chand Munim on 6th June 1950. Reliance was placed on a pronote Ext. R.W. 1/2 and receipt Ext. R.W. 2/2. These documents were produced before the Tribunal after the conclusion of the petitioner's evidence. The Tribunal was not prepared to allow these documents to come on the record at that stage but it was represented to us that these documents had been scribed by a Petition-Writer (Hira Nand) and entered in his register. Consequently we placed the documents on record.

The pronote is dated 5th June 1950 and the receipt 6th June 1950. According to the pronote Brahm Dev borrowed Rs. 4,000 from Karam Chand and agreed to repay the amount with interest at Re. -/8/- p.c., p.m. According to Karam Chand R.W. 1 he had paid the entire amount to Brahm Dev on the 5th June but Brahm Dev signed the pronote and executed the receipt on the next day. The witness could not advance any explanation for this strange phenomenon. He further states that his father had withdrawn Rs. 2,000 from his account with the Post Office about a fortnight before the execution of the pronote while he himself had withdrawn Rs. 1,000 from Johri Mal Giani Ram a day or two before the execution of the pronote; he had Rs. 1,000 with him and thus had made up Rs. 4,000 and paid it over to Brahm Dev on the 5th June and obtained the aforesaid pronote on the next date. No Post Office Pass Book was produced to show the above withdrawal. Again, according to Karam Chand, he had deposited the above amount with M/s Johri Mal Giani Ram and used to charge them interest Re. -/12/- p.c. p.m. It is unlikely that he would forego this interest and advance the amount to Brahm Dev at Re. -/8/- p.c., p.m.

In order to explain the difference in dates of the pronote and the receipt Hira Nand Petition-Writer R.W. 20 and Brahm Dev R.W. 22 stated that on the 5th June Karam Chand had not the requisite amount with him although the pronote had been executed, and he brought the money on the next day when the pronote was completed and the receipt signed by the executant. This evidence evidently runs counter to that of Karam Chand himself. Further, Hira Nand petition-writer did not produce his register before us to show that these two documents had been properly entered therein, and stated that he had placed his register in the shop of his son but could not find it. The inference is obvious. Either no entry in the register exists at all, or, if it does it was interpolated therein during the course of the present proceedings. Evidently he colluded with Shri Mam Raj and his son Brahm Dev to create this false evidence and manufacture these false documents. No books of the depot or other documents were produced to show that Shri Mam Raj had started withdrawing money from the depot. The pronote and the receipt have been set up to hide the fact that Shri Mam Raj was in fact running a depot at the relevant time.

That Brahm Dev used to work at the depot is not surprising, because he is the eldest son and his father is illiterate. It was thus he who used to maintain the registers of the depot. He engaged Karam Chand R.W. as his *karinda* at the shop sometime in the middle of June, 1950, when the agreement R.W. 1/1 was executed. Even if this agreement be assumed genuine the employment of this agent does not help the respondent at all.

As already observed, the depot was in the name of Shri Mam Raj Harijan and remained so till the end of February 1952, and the alleged partition was not communicated either to the Rationing Officer or to the Marketing Officer or even to the Sale Tax Officer from whom Shri Mam Raj had obtained the requisite licences.

In the circumstances I am clearly of the view that the plea of partition is absolutely false and fake and it is a pity that manufactured evidence was led to prove it. I, therefore, hold that Shri Mam Raj respondent was a depot-holder for the distribution of food-grains at the relevant time.

Issue No. 1(ii).—Being a depot holder charged with the duty of distributing food-grains to card-holders, Mam Raj, it is contended by the petitioner's learned counsel, was disqualified to stand as a Member for the State Legislature in view of Section 7(d) of the Act. This section reads thus:—

"A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State—

(d) If whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government."

The petitioner's counsel contends that this case falls under the third sub-clause inasmuch as the respondent had a share or interest in a contract for the performance of services undertaken by the State Government. This is a disabling clause and has to be construed strictly. Before the respondent can incur a disqualification under this Section two points must be established, namely,

(1) The Punjab Government, which was the appropriate Government in view of Section 9 of the Act, had undertaken the performance of any services in regard to the supply or distribution of food-grains;

(2) The respondent had a share or interest in a contract for the performance of such services.

As regards the first point, respondent's learned counsel contends that by introducing controls in the country the Government had rather done dis-service to the people because they had controlled everything as regards the procurement, distribution and supply of food-grains. He also argues that Government had not undertaken any service, because "undertaking" in his view connotes legal liability on the part of the Government to supply food-grains to the citizens and this was lacking in the present case. It is difficult to appreciate or accept his contention.

About the end of the second World War there was an acute shortage of food-grains, and this shortage became acuter after the Partition because the grainary of India had fallen to the side of Pakistan. The Government was compelled to import millions of tons of food-grains from outside countries at a tremendous cost in order to feed the people, and it was therefore necessary for them to see that the food-grains, imported from abroad or otherwise procured from the country itself, were fairly and equitably distributed amongst the citizens. Accordingly in 1946 the Essential Supplies (Temporary Powers) Act was enacted by the Central Legislature in order to provide for the continuance during a limited period of powers to control the production, supply and distribution of and trade and commerce in certain commodities. By Section 3 the Central Government assumed these powers of control, and under Section 4 they delegated these powers to the Provincial Governments. Acting under the delegated powers the Governor of the East Punjab promulgated "The East Punjab Rationing Order, 1948", and in accordance with its provisions the Punjab Government assumed the control of supply and distribution of food-grains. Under the Monopoly Procurement Scheme they alone could purchase wheat from the growers and distribute it amongst the citizens in rationed town through recognized depots and no citizen could get even a grain of food-stuff except on a ration card from a recognized depot.

The respondent's counsel argues that all these were restrictions on the free movement of foodgrains and the Government cannot be said to have undertaken any service, but it is forgotten that without such controls owing to the chronic shortage of foodgrains the poor and the needy would have suffered terribly and the history of the Bengal famine would have repeated itself with greater force in the whole country. In this connection it is pertinent to quote the observations of the Chief Justice of the Madras High Court in 1952 I.M.L.J. 514 at page 523 where his Lordship observed:

"I quite realise that during periods of acute shortage of essential goods and commodities, it is not only desirable but also imperative that the State should take steps to regulate their purchase and sale, with a view to an equitable distribution among all consumers."

In my view both the Central and the State Governments took upon themselves these services for equitable distribution and availability at fair prices of foodgrains and other essential commodities.

The counsel next contends that the Government did not "undertake" the service, because there was no obligation on the part of the Government to supply foodgrains either to the depot-holders or to the people at large. According to him the word "undertaken" must carry with it legal and enforceable obligation on the part of the Government. I must confess that I see no force in this argument.

The word 'undertaken' is nowhere defined in the Act, but in Stround's Judicial Dictionary, Second Edition, page 2120, the meaning given to this word is:

"The word 'undertake' with reference to a contract under Section 1 House of Commons (Disqualification) Act, 1782, means, to enter into".

This word has also been the subject of judicial construction. In *Leck Vs. Epsom Rural District Council* (1922) P.14 I. KB. 383, the question was raised whether the local authority had undertaken the work of cleansing cess-pools in the district under Section 42 of the Public Health Act 1875. At page 392 Mc Carde, J. observed thus:

"By the word 'undertook' I understand that they either expressly resolved to do the thing mentioned in the Section or in practice so acted as to show that they had resolved to do it".

I, therefore, hold that by issuing controls regarding the supply and distribution of foodgrains the Punjab Government had undertaken services within the meaning of Section 7(d) of the Act.

As regards the second point, the crucial question to decide is whether the respondent depot-holder had entered into a contract with the Government for the distribution of foodgrains amongst the card-holders.

In this connection it is pertinent to mention that "The Representation of the People" Bill, 1950 as it emerged from the Select Committee, contained sub-clause (ii) to clause 'd' of section 7 and it read thus:

- "He holds a licence, permit or authorisation of a like nature issued by the Government of India or the Government of any State under a law regulating the supply, movement or price of any goods for the purpose of trading in such goods".

There were several minutes of dissent against the above Sub Clause which was deleted altogether by Parliament, for it was felt that to disqualify a licence or permit or authorisation holder from being a member of the Legislature would be tantamount to dis-enfranchising almost the whole commercial community. As already observed, we are living in an age of chronic shortage of food, clothing, foreign exchange, imported goods and every industrial raw material and agricultural produce as well as manufactured goods, and this has led to control of prices, movements and supply of almost all the important commodities. There is in force control over imports, exports and foreign exchange. In fact there is hardly any phase of our life which is not under control. Consequently it was felt by Parliament that to disqualify licence and permit holders would be to dis-enfranchise countless persons i.e. almost the whole business community. Hence sub-clause (ii) was deleted and only clause 'd' remained on the statute book.

The question thus boils down to this:

Whether depot-holder was under contract with the Government or whether he was a mere licence or permit or authorisation holder when he supplied foodgrains to card-holders in rationed towns.

In the present case the petitioner's counsel solely relies on the agreement Ext. P.W. 8/3 which Shri Mam Raj Respondent had executed in Form R-XIV on 29th January 1949. The heading of this Form is "Agreement to be executed by the Retail Distribution". It is necessary to quote this alleged agreement *in extenso*:

"I M/s Mamraj Harijan hereby state that if I am appointed an authorised retail distributor for distribution of rationed and distribution articles under the provisions of the East Punjab Rationing Order, 1948, I shall abide by all the provisions prescribed from time to time, by or under the said Order and any directions issued thereunder or by the rationing authorities.

2. In particular—

1 undertake to sell every rationed and distribution article at a price not above the price that may be fixed from time to time by the Rationing Controller or any other officer authorised by him in his behalf for retail sale of that article in rationed area.

3. I also undertake to sell to the holder of ration documents every rationed and distribution article in a condition which will not be in any way inferior to that in which it is received by me.

I agree to deposit with the Rationing Controller/Town Rationing Officer Rs. 200 against the fulfilment of this undertaking. I agree to the forfeiture by the Rationing Controller/Town Rationing Officer, .. of a part or whole of this deposit for any breach by me or by any person acting on my behalf of the provisions described from time to time under the East Punjab Rationing Order, 1948, or any directions thereunder, or issued by the Rationing Authorities."

This document was signed by Shri Mam Raj as well as by the Town Rationing Officer, but it is not clear why T.R.O. had signed it because by this document neither he or his Government had incurred any obligation at all towards the executant. In fact, as I see it, this document was unilateral and cast no obligation whatever on the other party i.e. the Government.

The ration scheme in force in rationed towns was that the depot-holder was to get his fortnightly quota from the Provincial Reserve at fixed price and then sell it to card-holders at controlled rates and thereby earn his commission. This commission in the case of wheat was -/12/9 per maund. When a depot was allotted and the depot holder had furnished due security he was issued an authorisation under clause 3 of the East Punjab Rationing Order, 1948, in Form R.XII which is referred to in para 5.85 of the East Punjab Civil Supplies manual and will be found in enclosure V. This was clearly an authorisation to the depot holder to supply rationed foodgrains to card-holders in accordance with the provisions prescribed by or under the said Order. Para 2 of this Form specially lays down that the authorisation may be amended, withdrawn or cancelled by the Rationing Controller/Town Rationing Officer.

Not only is there no mutuality in the above agreement relied upon by the petitioner but this agreement has even no finality, for it can be amended, withdrawn or cancelled by the Rationing Controller any time he liked. No right vests in the depot-holder to enforce the alleged contract against the Government or compel them to provide him with foodgrains for distribution amongst card-holders. In the circumstances it is difficult to hold that there was any contractual relationship between the respondent and the Government.

Moreover under Section 299 of the Constitution "all contracts made in the exercise of the executive power of the Union or of a State, shall be expressed to be made by the President or by the Governor or the Rajpramukh of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor or the Rajpramukh by such persons and in such manner as he may contract or authorise." In the present case there is not a word on the file or in any document to show that the Governor of the Punjab or any body on his behalf had entered into a contract with the respondent depot-holder. Thus the essential ingredient of contract with the Government is wholly lacking in the present case. In my opinion all that the depot-holder had was a licence or an authorisation to distribute foodgrains, purchased by him from the Provincial preserve, amongst the card-holders.

There is a clear distinction between a contract and licence. In 17 Rural case law, page 474, article 2, a licence has been thus defined:—

"A licence is in the nature of a special privilege and not a right common to all; and it is often required as a condition precedent to the right to carry on business or to hold certain classes of property within the jurisdiction and it is not a property right, or a contract".

Again at page 476 it has been stated:

"A licence is not a contract between the State and the licensee and is not property in any constitutional sense. Nor can it be said that the grant of a licence to conduct a business and the lease of municipal property in consideration of the payment of rent is a contract to secure the licensee against unlicensed competition".

Further on, it is stated that,

"Following the general principle that a licence is not a contract, it is clear that it does not in itself create any vested right, or permanent rights, and that free latitude is reserved by the Legislature to impose new or additional burden on the licensee or to alter the licence or to revoke or annual it."

A similar case, on all fours with the present one, came up before the Patiala Election Tribunal in *re: Shri Gian Chand Vs. Shri Siri Ram Bansal* reported at page 2539 of the *Gazette of India Extraordinary*, dated 6th December, 1952. There too the Tribunal was dealing with the case of a depot-holder of goodgrains in Pepsu, and the learned Members of the Tribunal held that the depot-holder was merely a licensee and was not disqualified to stand for the Legislative Assembly.

The Jaipur Election Tribunal in *re: Pt. Harish Chandra Vs. Raja Man Singh etc.* reported in the *Gazette of India Extraordinary*, dated 24th April, 1953, was dealing with the case of a sugar licence-holder and the learned members held that he was not disqualified under the law from being a member of the Legislative Assembly. They cited with approval the aforesaid Patiala case and held that there was not much difference between a sugar licence-holder and foodgrain licence holder. The following passage from the judgment will be found opposite:—

"In the present case the security bond Ext. R1/2, which has been mainly relied upon in order to show that there was a contractual relationship between the State of Rajasthan on the one part and the petitioner on the other, is a unilateral document executed by the petitioner alone. It does not mention that any contract had been made between His Highness, the Rajpramukh of Rajasthan, and the petitioner, nor does it purport to be executed on behalf of His Highness, the Rajpramukh of Rajasthan. The Rajasthan State had no duty under the security bond and it was only the petitioner who had undertaken certain obligations. The petitioner cannot, therefore, be said to have acquired any interest or share in a contract for the performance of any services undertaken by the Government of Rajasthan. It may be argued why the Legislature should not debar a licensee-holder from standing as a candidate to the legislature while it had debarred a contractor. It may be contended that the principle underlying the imposition of disqualification on a contractor is that he may be amenable to Government influence and may not, therefore, act freely and independently inside the legislature. The same consideration may prevail in the case of a licensee-holder rather with greater force. Our plain duty, however, is to interpret the law, as it stands, and if it disqualifies only a contractor and not a licensee we cannot add the word licensee if the legislature either deliberately or even by oversight omitted these words while framing section 7(d) of the Act. Suffice it to say that section 7(d) imposes a disqualification on a contractor and not on a licensee. We cannot, therefore, hold that a licensee, as the petitioner is, was disqualified to stand as a candidate to Rajasthan Legislative Assembly simply because the same reason may, with greater force make it desirable to disqualify a licensee-holder as a contractor".

With the above observations I am in complete agreement and will only add that the omission to include a licensee among the disqualified persons was, as already stated deliberate and not due to any oversight.

Our attention has been invited by the petitioner's learned counsel to several reported cases in support of his contention but they all proceed on their peculiar facts. For instance, in *Ram Chand Vs. Madhawa Ram* reported in *Punjab Gazette Extraordinary* of 18 April, 1953, the Election Tribunal Ludhiana dealt with the case of the New Rice Association Karnal which had entered into a regular contract with the Punjab Government for husking rice and then selling it to authorised distributors in the areas under the orders of and at prices fixed by the Government. The actual agreement will be found printed at page 570. It was a regular contract by the Association with the Government. The case is, therefore, distinguishable.

The case dealt with by the election Tribunal Vellore, and reported in the *Gazette of India Extraordinary*, dated 17th December 1952, related to a "State nominee" for distribution of bales of yarn in the North Arcot District. There was a regular

agreement (A-4) by the State Nominee with the Governor on a stamp paper of Rs. 1/8/-. The agreement could be determined by either side on one month's notice. The Tribunal found that the system of "State nominee" had received statutory recognition in the State. It was, therefore, held on the facts that the nominee was under contract with the Government and was, therefore, disqualified from standing for the Legislative Assembly.

Likewise in the case decided by the Election Tribunal Tanjore, published in the *Gazette of India Extraordinary*, dated 23rd April, 1953, there was a regular contract between the person concerned and the Government and it was, therefore, held on the strength thereof that he had entered into a contract with the Government. This authority is also distinguishable.

The learned Government Advocate has supported before us the cause of the petitioner, but after a careful consideration of the relevant facts adduced on the file and the case law cited before us, I am clearly of the view that respondent Mam Raj was only a licensed or authorized depot-holder and there was no contractual relationship between him and the Government such as to debar him from standing for the Legislative Assembly. His nomination papers had, therefore, been properly accepted. (*Page 21.)

Issue No. 1 (ii):—In view of the above finding this issue does not arise.

To sum up, my findings are:

1. Shri Mam Raj was a depot-holder at the relevant time for supplying food-grains to card-holders; and
2. The Punjab Government must be deemed to have "undertaken services" when they took upon themselves the procurement, supply and distribution of food grains in rationed towns by virtue of powers vested in them under Section 3 of the Essential Supplies Act; but
3. Shri Mam Raj was under no contract with the Government and was a mere licence or permit or authorisation holder for the distribution of foodgrains amongst card-holders. He is not therefore disqualified for being a member of the Assembly and consequently his nomination papers had been validly accepted.

In the result I dismiss the petition but direct the parties to bear their own cost. Mam Raj respondent is disentitled to costs because he produced perjured and manufactured evidence before us. The petitioner shall, however, pay the Government Advocate Rs 100/- as his fee.

HISSAR;
The 25th May, 1953.

(Sd.) TEK CHAND SETHI, *Member*,
Election Tribunal, Hissar.

I agree.

(Sd.) MAHARAJ KISHORE, *Chairman*,
Election Tribunal, Hissar.

I agree.

(Sd.) GURBAKHSI SINGH GYANI, *Member*
Election Tribunal, Hissar.

[No. 19/288/52-Elec. III/8490.]

By Order,
P. R. KRISHNAMURTHY, Asstt. Secy.

